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ABŪ ḤĀMID AL-GHAZĀLĪ'S JURISTIC DOCTRINE IN *AL-MUSTAṢFĀ MIN 'ILM AL-UṢŪL* WITH A TRANSLATION OF VOLUME ONE OF *AL-MUSTAṢFĀ MIN 'ILM AL-UṢŪL*

VOLUME ONE

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PREFACE

First, gratitude to the *Lawgiver* is very much in place here, then to the Messenger, peace and blessings of Allâh be upon him, who not only conveyed the *Sharî'a* but lived it and remains as its model.

Next, this gratitude compels me to appreciate the efforts of many who delivered this message to me, sharpened my understanding of its significations, and who over the years smoothed the way for the production of this work. In breaking with tradition, however, I wish not to give mention to their names here out of fear of neglecting any of them. To each, *jazâka Allâhu khayran*.

The following is the transliteration scheme I followed in the dissertation, both in the introduction and translation. However, in place of the commonly used diacritical point under the letters ح, ص, ض, ط, and ظ, I used, due to computer limitations, underlining for the latin equivalents:

ء	'
ا	a
ب	b
ت	t

ث	th
ج	j
ح	h̲
خ	kh
د	d
ذ	dh
ر	r
ز	z
س	s
ش	sh
ص	s̲
ض	d̲
ط	t̲
ظ	z̲
ع	‘
غ	gh
ف	f
ق	q
ك	k
ل	l
م	m
ن	n
ه	h
و	w
ى	y

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PART 1. ABŪ ḤĀMID AL-GHAZĀLĪ'S JURISTIC DOCTRINE IN *AL-MUSTAṢFĀ MIN 'ILM AL-UṢŪL*

INTRODUCTION

In studying the great contributors to Islamic civilization, one observes that most are distinguished by their mastery of one or two disciplines that earn them fame or credibility within their specialties. Mâlik, Abû Hanîfa, al-Shâfi'î, and Ibn Hanbal are not mentioned but their impact on jurisprudence comes to mind. Al-Kindî and al-Farâbî are remembered for their engagement with and contributions to philosophy and its issues. The mention of Sîbawayh and al-Jâhiz evokes thoughts of grammar and literature. The names Bukhârî and Muslim are synonymous with *hadîth*. Al-Ash'arî and Mâturîdî are associated with *kalâm*, and the name Nizâm al-Mulk brings to mind a memorable political career.

But it is a different case with the mention of 'The Proof of Islam,' Abû Hâmid Muhammad al-Ghazâlî (d. 505/1111). He is a composite of great personalities, a master of various disciplines. Regarding philosophy, he ranks among the most influential Muslim thinkers, changing the course of history in that field in the Muslim world and possibly beyond. Concerning *tasawwuf*, he is one of its most prominent inspirers, though no formal order ever carried his name. Nevertheless, his efforts brought about the great conciliation of *sûfism* and orthodox Islam. His studies in *kalâm* are important and original. In the field of Law, he has been described by some as

the "consummate *imâm* of the *fuqahâ'*."[1] His writings on the origins and the details of Islamic jurisprudence have shaped works in these fields until today. Indeed, one finds hardly a book on *usûl* written after Ghazâlî that does not rely upon him, quote him extensively, or engage him in debate—especially with reference to his book *al-Mustasfâ*.

Yet it is astonishing that Ghazâlî the philosopher, the *sûfî*, the theologian, and the reviver has so fixed the attention of modern researchers, East and West, as to eclipse what must be acknowledged as his life's central endeavor, the breathing of the spirit of Islam into the corpus of the religion's jurisprudence and the coherent and cogent formulation of its jurisitc doctrine.

In this sense, he is, shall we say, less fortunate than many a lesser legist whose contributions to Islamic Law pale in comparison to the great Ghazâlî's but whose efforts have nonetheless found fame and caught the eye of modern-day scholars. For example, Ghazâlî's rival Ibn Rushd has received more academic analysis as a jurist than he. A. Laîmèche's study and translation into French of the Book of Marriage in Ibn Rushd's *Bidâyat al-Mujtahid wa Nihâyat al-Muqtasid* is more than what Ghazâlî the jurist has received at the hands of contemporary scholarship.[2]

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[1]Tâj al-Dîn 'Abd al-Wahhâb b. 'Alî b. 'Abd al-Kâfî al-Subkî, *Tabaqât al-Shafi'îyya al-Kubrâ*, 10 vols. ed. Mahmûd al-Tanâhî and 'Abd al-Fattâh al-Hilw (Cairo: 'Isâ al-Bâbî al-Halabî Press, 1964), 6:216.

[2]With the exception of *Kitâb Bidâyat al-Mujtahid wa Nihâyat al-Muqtasid* Ibn Rushd is not known to have composed any other significant legal work. I have pointed out that Ibn Rushd has

Modern studies of and references to Ghazâlî's writings in Islamic Law, particularly with respect to *al-Mustasfâ*, have been secondary at best and of no real size or scope. For example, the paper that our Shaykh Muhammad Abû Zahra has presented on Ghazâlî the *faqîh* at the festival of the nine-hundredth year commemoration of Ghazâlî's birth is, while valuable, of modest length and limited breadth, as is Muhammad Hasan Hîtû's introduction to Ghazâlî's *al-Mankhûl min Ta'lîqât al-Usûl*, Hamad al-Kubaysî's preface to *Shifâ' al-Ghalîl fî Bayân al-Shabah wa al-Mukhîl wa Masâlik al-Ta'lîl*, 'Alî Muhî al-Dîn al-Dâghî's introduction to the first volume of *al-Wasît fî al-Madhhab*, and 'Abd al-Wahhâb Ibrâhîm Abû Sulaymân's brief account in his book *al-Fikr al-Usûlî*. All impose the primary considerations of the matter at hand in the larger context of their presentations.

Even more of a cursory treatment of Ghazâlî's juristic works occurs in the European languages. Henri Laoust's *La Politique de Ghazâlî*, merely outlines Ghazâlî's discourse on the *Sharî'a* sources. Contact with his legal doctrine is even more incidental in Hava Lazarus' *Studies in al-Ghazâlî*, where she devotes a chapter to his terminology of *kalâm* and *fiqh*. Similar limitations affect the articles of Wael al-Hallaq on *ijtihâd* and the principles of Islamic

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abridged Ghazâlî's *al-Mustasfâ*; see Chapter XI in this introduction. In any case, it is no exaggeration to say that the Andulusian philosopher, despite his prominence in Muslim history, cannot compare as a *faqîh* by any measure with Ghazâlî in terms of works in the field of Law.

jurisprudence, and that of Bernard Weiss on the theory of *tawâtur* according to Ghazâlî.

More recent works, like Robert Brunschvig's "Pour ou contre la logique Grecque chez les Theologiens-juristes de l'Islam: Ibn Hazm, Al-Ghazâlî, Ibn Taimiyya," and Iysa Ade Bello's dissertation *Ijmâ' and Ta'wîl in the Conflict Between al-Ghazâlî and Ibn Rushd* also do not intend to broadly examine Ghazâlî's legal work and its influence on Islamic jurisprudence. Like the studies on Ghazâlî in the Muslim world, then, those of the West tend to be short and do not bring into focus his jurisitc contribution.

This dissertation provides for the first time an explicit presentation of Ghazâlî's juristic doctrine as expressed in the last and most important of his works of Law, *al-Mustasfâ min 'ilm al-Usûl*, making available in English a principal text on the sources of Islamic jurisprudence. The study includes two major parts: The first inquires into Ghazâlî's jurisitc thought, then places it in the context of the *usûlî* literature preceding him and traces its legacy in the science of the principles; the second part is a translation of volume one of *al-Mustasfâ*, specifically the book's Exordium and the first two of the four *Qutbs* (Poles), where Ghazâlî chose to subsume virtually all of the essential discussions of *usûl*.

This study is divided into eleven chapters, the first six of which intend to unfold Ghazâlî's conception of Islamic Law, where the notion of man as *mukallaf* (a responsible creature) lies at its heart. The laying of obligation is the trust that man has accepted from his Lord. It entails the adherence of all human acts to the rules of His Law (the *Sharî'a*). Man, therefore, is not only

accountable to God in the afterlife for his acts, upon which he shall be judged and duly punished or rewarded, but he is answerable to the *Sharî'a* in the temporal world.

For the rules to be valid, they must stem from the divine source, God. This is a point that Ghazâlî would have 'all' engrave on their hearts. Its significance in his view of man and Law cannot be exaggerated. Indeed, none has legislative authority but that it is granted by the Almighty—the Prophet, the ruler, the father, etc. Here Ghazâlî draws the line with the Mu'tazilites, arguing that reason independent of revelation is incapable of originating *Sharî'a* rules. Rather, it endows man with the means to recognize their single source, God, and to acknowledge the truth of His Messenger, through whom the *Shârî'a* is manifested.

Ghazâlî's central notion of divine obligation upon man is moreover universal, embracing with its authority everyone, Muslim and non-Muslim. But while the *Sharî'a* obligations are inclusive of non-Muslims, they bear responsibility only before God in the Hereafter, for accepting Islam is required for the temporal imposition of *all* the *Sharî'a's* obligations upon them.

In essence, the *Sharî'a* rules bid the performance of 'this' act or the abandonment of 'that,' classifying them as obligatory (*wâjib*), desirable (*mandûb*), allowed (*mubâh*), reprehensible (*makrûh*), or forbidden (*harâm*). Acts are further qualified as being valid (*sahîh*), or invalid (*bâtil*). Their performance, abstention, validity or invalidity are raised by specific signs or causes or conditions.

Ghazâlî states explicitly that the *Sharî'a's* bidding 'to do' or 'not to do' comes solely through the channel of revelation,

specifically through prophetic revelation in two forms, the Qur'ân and the Prophet's canonical traditions (*Sunna*). In addition, the Consensus (*Ijmâ'*) of the entire community provides a third avenue for deriving legislation, authenticated by revelation, unlike the classical Muslim jurists, who restrict *Ijmâ'* to the scholar-jurists. Ghazâlî requires that Consensus occur in regard to matters of religion where there is no text to indicate a given rule.

Further breaking with classical thought on the principles of Law, he does not recognize analogical reasoning (*qiyâs*) as a source of Law, declaring the fourth and final principle of legislation to be *Istis<u>h</u>âb al-<u>H</u>âl*, which comes down to this: When a novel situation arises where there is no text specifying its status, man remains free to act or not to act, as the case may be, based on what Ghazâlî terms *al-barâ'a al-a<u>s</u>liyya*, the original state of freedom from obligation before the revelation of the *Sharî'a*.

In addition, Ghazâlî contends that the Lawgiver has the right and the power to obliterate any *Sharî'a* rule; this elimination is not a change of God's mind (*badâ'*); rather, it is abrogation originated from His wisdom. Ghazâlî's placement of the discussion on abrogation immediately after his discourse on the Qur'ân—yet another break with classical *u<u>s</u>ûl*—is not followed in this study. Rather, it is treated in Chapter Six of the inquiry into the *Sharî'a* sources, as it seems to apply to all of them.

The next chapter scans the modern scholarship on the problem of the authenticity of Ghazâlî's works, since a great many books have been falsely attributed to him. This aims primarily to show the authenticity of his legal writings—especially *al-Musta<u>s</u>fâ*,

which, in any case, has never been doubted—and is followed by a review of Ghazâlî's books of Law.

The two subsequent chapters provide an historical context to in which to view *al-Mustasfâ* (and to some degree its author). The first gives an overview of the development of *usûl* in the three centuries between al-Shâfi'î and Ghazâlî, in addition to a valuable and farely comprehensive list of the works of *usûl* composed in that span.

The second surveys the four premier books in the field from the classical era—aside from *al-Mustasfâ*—and highlights the differences in method between the two prominent approaches to deriving the principles of Law, known as the *Mutakallimûn* and the *Fuqahâ'* approaches. Also, Abû Zayd al-Dabbûsî, the fourth-century Hanafite jurist from Transoxiana, is introduced at some length here, as well as his great book *Taqwîm Usûl al-Fiqh wa tahdîd Adillat al-Shar'*. On the one hand, he represents the *Fuqahâ'* approach to *usûl*; on the other, Ghazâlî states that he wrote his lengthy discourse on *qiyâs* in *Shifâ' al-Ghalîl* to critique this Hanafite master jurist, who also, incidentally, deserves to be studied and revived.

Finally, I commit one chapter to the unique and unparalleled organization of *al-Mustasfâ*, for Ghazâlî designed his book to mirror what he believed to be the natural structure of Law: The *Sharî'a* rules, being the fruit of Law, require, of course, a source of fruition and processes of cultivation to be used by the harvester, the independent practitioner of jurisprudence (*mujtahid*). Ghazâlî commences with his analysis by partitioning the discipline as

reflected in his book into four *Quṯbs* (Poles), a division that evokes strong sentiments of *ṣufism*, which Ghazâlî most certainly realized. The first *Quṯb* is of the sources, the second of their rules, the third of language and rational principles, where he discusses *qiyâs*, and the fourth is of the scholar-jurist.

These *Quṯbs* are preceded by an exordium that defines and assesses Islamic jurisprudence and its principles both independently and in relation to other sciences. Here Ghazâlî lays down his philosophy for the introduction of the subject of Law. He also provides a section on issues of logic, stating that it is not requisite for the study of Islamic jurisprudence; rather it is a primer to all sciences.

This chapter also does the brushwork on Ghazâlî's style in *al-Mustaṣfâ*, as well as a mention of notable commentaries on and abridgements of the book. In so doing, it touches upon the prominent Ḫanbalite jurist Muwaffaq al-Dîn b. Qudâma's extensive and often literal reliance on *al-Mustaṣfâ* in his book *Rawḏat al-Nâẕir wa Junnat al-Munâẕir*. Finally, the evolution of Ghazâlî's juridical thinking in the nearly twenty-five years between the writing of *al-Mankhûl* and *al-Mustaṣfâ* is offered by comparing excerpts on (*ijtihâd*) from each of the books. In the process, Ghazâlî's views on the qualifications of the independent jurist (*mujtahid*) are delineated.

The study concludes with an observation on Ghazâlî the Muslim jurist who sought to illuminate the inseparability of life's transactions and man's worship, the outcome of which is *al-*

Mustasfâ' min 'Ilm al-Usûl, whose first two *Qutbs* in translation follow in Part Two of this dissertation.

CHAPTER I

Al-AHKĀM (THE SHARĪ'A RULES)

Ghazâlî's approach to *uṣûl al-fiqh* is based on the premise that in essence this science is knowledge of how to extract *aḥkâm* (rules) from the *Sharî'a* sources.[1] As for the science of *fiqh*, it concerns itself particularly with the *Sharî'a* rules themselves which have been established in order to qualify the acts of the locus of obligation, man. Accordingly, Ghazâlî views it as imperative for any discourse on *uṣûl* to focus on three essential elements: The *aḥkâm*; the *adilla* (sources); and the means by which rules are extracted from these sources, which ultimately includes examination of the qualifications of the extractor, namely the *mujtahid*. The substance of *al-Mustaṣfâ*, then, both in the Exordium and in the four *quṭbs* (poles), revolves around these three constituents.

ḤUKM (THE *SHARĪ'A* ADDRESS)

Linguistically '*ḥukm*' is the verbal noun of '*ḥakama*', which signifies "withholding, restraint, prevention; and judgement,

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[1]Abû Ḥâmid al-Ghazâlî, *al-Mustaṣfâ*, 2 vols. (Bulâq, Egypt: Amîriyya Press, 1322-24/1905-7), 1:7.

jurisdiction, rule, dominion, authority, or governing."[2] The technical meaning, however, varies according to its usages in the terminologies of philosophy, Arabic grammar, *uṣûl*, and *fiqh*.

Ghazâlî defines *'ḥukm'* as the *Sharî'a* address (*khiṭâb al-Shar'*) in relation to the acts of the loci of obligation, the address being God's revelation to His Messenger. It is divided into two categories: Revelation for recitation (*waḥî matluww*), that is, the Qur'ân; and revelation not for recitation (*waḥî ghayr matluww*), namely the *Sunna*.[3]

Another technical *uṣûlî* application uses *'ḥukm'* to signify the fundamental rules inherent in the *Sharî'a* address, expressing the intent of the Lawgiver, where the commands of the *Sharî'a* necessitate obligations and its bans mandate prohibitions. In other words, the general principles of the rules (*aḥkâm*) result in the obligation, prohibition, recommendation, reprehension, or allowance of acts; or establish their rectitude and invalidity. Categorizing the performance of acts as either timely or belated is another nuance of the term *'aḥkâm'* in *uṣûlî* usage.

Ghazâlî further distinguishes between rules that qualify acts as obligated, prohibited, and so on, and rules that express the

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[2]For the linguistic meaning of *'ḥukm'* see Jamâl al-Dîn b. Muḥammad Manẓûr, *Lisân al-'Arab*, 15 vols. (Beirut: Dâr Ṣâdir, n.d.), 12:140-145; Ibrâhîm Muṣṭafâ et al., *al-Mu'jam al-Wasîṭ*, 2 vols. (Tehrân: Maktabat al-'Ilmiyya, n.d.), 1:189-190; and Edward Lane, *An Arabic-English Lexicon*, 8 parts (Beirut: Librairie du Liban, 1980), 2:616-18.

[3]Ghazâlî, *al-Mustaṣfâ*, 1:129.

conditions posited by the *Sharî'a* indicating their obligatoriness or prohibition, such as reaching puberty, which is a condition obligating a person to perform or refrain from certain acts. In later *uṣûlî* works, these distinct types of rules were assigned terms according to their function, *al-ḥukm al-taklîfî* (the qualifying address) and *al-ḥukm al-waḍ'î* (the positing address). In *fiqhî* terminology, *'ḥukm'* is the rule that a *mujtahid* arrives at based on the *Sharî'a* sources and in accordance with their general principles concerning an act of the loci of obligation.

Ghazâlî insisits that *ḥukm*, be it in the *uṣûlî* or the *fiqhî* sense, must be related to the acts of the loci of obligation. So, the *Sharî'a* Texts concerning God or His attributes, affairs of preceding nations, events in the time of the Prophet, or description of the Day of Judgement are not considered *Sharî'a* rules per se, for they neither qualify the acts of the loci of obligation nor reveal their requirements.[4] Ghazâlî also makes a fine but significant point concerning the *Sharî'a* rules not actually being directed at the physical aspects of creatures or substances; that is, for example, the hands or tongue of a person, or, say, alcohol.[5] Rather, rules qualify acts relating to or emanating from the physical being of creatures, like stealing, eating carrion or the flesh of swine, backbiting, consuming alcohol, and so on. For example, rules obliging the maintenance of health or cleanliness are related to the acts through

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[4]Ghazâlî, *al-Mustaṣfâ*, 1:55.

[5]Ghazâlî, *al-Mustaṣfâ*, 1:7.

which these tasks are performed, not to the body itself. Similarly, rules pertaining to contracts, rites of worship, and avoidance of prohibitions are likewise related to creatures' acts.

To further clarify this, he notes that the *Sharî'a* address expressed in the following verse does not indicate the prohibition of the mentioned beasts' corpses, but the *act* of eating them:

> Forbidden to you are carrion, blood, the flesh of swine, what is invoked to other than God, that which is killed by strangulation or violent blow or fall or gore, or from that which has been devoured by beasts of prey, except for that which you have sacrificed duly.[6]

And this is the case with the verse below as well:

> Forbidden to you are your mothers and daughters, your sisters, your aunts, paternal and maternal, your brother's daughters, your sister's daughters, your mothers who have given you suckle, your suckling sisters, your wives' mothers.[7]

So, the forbidding of mothers, sisters, and the rest is not directed at their physical beings per se, but at marrying them and its implications.

Ghazâlî furthers the discussion by saying that acts coming under the categories of the *Sharî'a* rules must meet certain requirements. First, their performance must be possible; so that

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[6]Qur'ân, 5:3.

[7]Qur'ân, 4:23.

bidding the performance of two opposite acts simultaneously or "denaturing a species" is impossible.[8] Second, they must be attainable by the locus of obligation. For instance, it is not possible to ask Zayd to fulfill a contract exclusively binding on 'Amr. Third, they must be distinguished from other acts in the mind of the commanded individual and be known as an address from God. Finally, their nature must be in conformity with obedience to God, as is the case with most of the rites of worship. For one cannot be commanded by the *Sharî'a* to perform an act which demands disobedience to God, such as worshipping other than Him.

AL-ḤĀKIM (THE RULER)

Ghazâlî's definition of *'ḥukm'* as the *Sharî'a* address, whose actual source is none other than God, reflects the classical Islamic view of Law. He does, though, focus on the term *address* and qualifies the status of an addresser—be he an angel, a Prophet, a *mujtahid*, or a *faqîh*—maintaining that one who pronounces a rule may be considered a ruler; for each of them in reality conveys the *Sharî'a* rule. However, the critical distinction is that only *the* Addresser, God, is capable of 'originating' rules and revealing them. Therefore, says Ghazâlî, only He is deserving of absolute obedience, for His is the creation and the command.

Based on this, neither an angel, nor a prophet, nor a common man—be he ruler or master—has actual sovereignty, nor are they capable of originating rules. If obedience to them is warranted, it

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[8] Ghazâlî, *al-Mustaṣfâ*, 1:86.

is so only on the basis of God obliging it.[9]

Stressing that originating obligations and prohibitions is an activity that only God is capable of secures order and guards against universal chaos. For if the ability to originate rules was attainable by His creation, then it is conceivable that the obliging of a thing by some which others have prohibited and the inverse would prevail, leaving no standard and creating disorder.[10] By adhering to this view, Ghazâlî establishes the justification for any Muslim to reject legislation commanding or prohibiting anything unless it comes from God or is based on His *Sharî'a*. Furthermore, one has the right to demand proof of the command based on revealed authority (*sam'*) from those who declare prohibitions or obligations.

After establishing this, Ghazâlî finds himself compelled to discuss the place of reason (*'aql*) in relation to revelation and, therefore, devotes an elaborate discussion to this.

REASON AND REVELATION

Ghazâlî's five qualifications of man's acts are an attempt to set measurable criteria by which to identify and categorize the *Sharî'a* rules expressed by the Qur'ân, the *Sunna*, and the *Ijma'*. He concedes, however, that all human acts in all times and places are not specified by the *Sharî'a*. So he must account for reason's role in his scheme as well. He supposes a state of pre-revelation before

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[9]Ghazâlî, *al-Mustasfâ*, 1:83.

[10]Ghazâlî, *al-Mustasfâ*, 1:83.

the coming of the *Sharî'a*, or after for those unaware of it. This raises two important questions: (1) Is God the sole imposer of obligation, or does reason share in this? (2) Are human acts liable to *Sharî'a* judgments in the state of pre-revelation?

Reason and the nature of human acts form the core of the dispute between the Ash'arite Ghazâlî and the Mu'tazilites. Ghazâlî's position in *al-Mustasfâ*—consistent with his other theological and *usûlî* works available to us—is that reason cannot create rules for man's acts, and any *Sharî'a* context that seemingly implies otherwise is figurative. Reason identifies the character that the *Sharî'a* imparts to human acts in forming rules, but is not a source of their origination. Moreover, these characters are not essential ones that render them inherently good or evil.

Ghazâlî repudiates the Mu'tazilites—particularly of Baghdad—who, allegedly under the influence of Greek philosophy, hold that reason not only recognizes good and evil but determines them since they are essential characters of acts. Accordingly, pre-revelation acts are obligatory, prohibited, or allowed by virtue of reason. Rather, he insists, it is the *Sharî'a* that classifies acts. What is good is so because *Sharî'a* bade or allowed it. And what is evil is such because *Sharî'a* forbade it. And the degree of an act's goodness or badness is determined by the strength of the *Sharî'a's* bidding or prohibition.

Thus, Ghazâlî rejects the Mu'tazilite notion of intrinsic goodness or badness in human acts, as well as reason's share as an originating source for commands and prohibitions. An obligatory

act is so because of the extrinsic character of revealed 'obligatoriness,' and such is the case with the other classifications.

Al-Mustasfâ examines this issue in relative detail owing to its central importance to the *Sharî'a* rules. It summarizes the Mu'tazilite positions on the pronouncement of good and evil (*tahsîn* and *taqbîh*) and their classification of acts in the absence of revelation, paving the way for Ghazâlî's response.

He starts by defining the terms '*husn*' (*good*) and '*qubh*' (*evil*) in order to confine the disagreement. *Good* and *evil*, he says, are used technically in three applications, two of which are related to an act's doer and one that pertains to the *Sharî'a* command itself.

The first is the popular usage, which is relative, restricting *good* and *evil* to the objectives of the doer. All acts that conform with one's objectives are good and are termed '*hasan*.' Acts that thwart one's interests are evil and therefore called '*qabîh*.' When, for example, a king is killed, says Ghazâlî, it is deemed 'good' by his enemies and 'evil' by his supporters.

Second, these terms are applied to all acts that one is permitted or expected to do. If you have the right to do it, then it is good. If you do not, then it is evil. Therefore, all acts of God are good for He is capable of doing them. Allowed acts (*mubâh*) are likewise good because one is able to do them.

In the third usage, the term '*hasan*' applies exclusively to what the *Sharî'a* declares good. Thus, any commanded act is good, be it obligatory or recommended. But this application pronounces neither good nor evil upon the *mubâh* act because the *Sharî'a* is indifferent in regard to it.

Ghazâlî's approach in defining terminology first enables him to marshal his definitions in order to refute the Mu'tazilite doctrine of the essentiality of good and bad acts (necessarily known by reason and subject to the consensus of all rational human beings). He dramatizes his view using the act of lying. Suppose the case of a prophet being pursued by an assassin. The would-be killer asks someone of the prophet's whereabouts. But the person lies in order to mislead the assassin and protect the prophet. Ghazâlî argues that this lying is *ḥasan* because of the good derived from it, the saving of the prophet's life. Indeed, he says, it is more than good. It is obligatory upon the person who knows the prophet's whereabouts. In fact, he sins and disobeys if he does not lie.

Thus, evil is not an intrinsic character of lying per se. Otherwise, it could not have changed from evil to good and would not have been praiseworthy on the part of its doer. Therefore, reason declares an act good or evil in relation to the agent and the circumstance of the act. Ghazâlî concludes his treatise by analyzing the roots of error in the pronouncement of good and evil. He reduces them to four: (1) Confusion in the use of terminology; (2) subjective assessment of acts based on personal aims; (3) faulty generalization in characterizing *ḥusn* and *qubḥ* in disregard of exceptions to the rule; and (4) reason's erroneous imagination caused by association. One may, for instance, show aversion to a multi-colored rope that resembles a harmful snake.

After formulating the sources of error, Ghazâlî defines key terminology that express their causes, which he again employs as the balance in which to weigh his opponents' arguments. He

couches his position in one case among those contentions of the Mu'tazilites that hold that all acts before the coming of the *Sharî'a* are allowed (*mubâh*). He says that one might tolerate this argument provided they mean by the term *'ibâha'* acts which the doer is free to perform or neglect. But this, he notes, is a misuse of terminology. He refutes their definition of *'ibâha'* and restates his position that issuing the *Sharî'a* rules is exclusively within the domain of the divine address. And since there is no address before revelation, there is no *ibâha*.

A second position attributed to others of the Mu'tazilites, namely that acts in the pre-revelation state are analogous to the manipulation of another's property and are therefore forbidden, is refuted by his second and fourth definitions, which contend that this is neither rationally acceptable nor reported in the *Sharî'a*.[11]

Finally, he repudiates those Mu'tazilites who advocate the suspension of judgement in the absence of *Sharî'a*, saying that if they mean by this that there are no rules until the *Sharî'a* comes, this can be tolerated. But if *suspension* connotes the stoppage of action until it arrives, this is wrong.

Yet Ghazâlî's skillful argumentation seems more to mirror legal affiliations and doctrinal difference of opinion than offer a practical, substantive alternative to the Mu'tazilite position that Reason has legislative capacity. For when Ghazâlî accepts the

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[11]This is inconsistent with the popular Mu'tazilite notion that acts are either 'good' or 'bad.' for more information on the various views and positions, see Zuhdî Jâr Allâh, *al-Mu'tazila*, 2nd ed. (Beirut: Al-'Ahliyya Publications, 1974), pp. 51-156.

principle of *Istis*h*âb*, he acknowledges that the *Sharî'a* does not qualify all human acts or specify either reward or punishment for them before revelation. Thus, these acts remain in the status of the original state of freedom from accountability, and Reason, by way of *ijtihâd*, rules upon them. However, he has repeated that the role of the former is as identifier—not as originator—of *Sharî'a* rules. He then proceeds with his discourse on *Sharî'a* rules, their divisions and requirements.

AL-MAHKŪM 'ALAYHI (THE LOCUS OF OBLIGATION)

The subject of rule is the locus of obligation, at whose acts the *Sharî'a* rules are directed, qualifying them as either obligatory, recommended, permissible, reprehensible, or prohibited. Apparent in his discourse, Ghazâlî refers to two fundamental conditions that one must fulfill to be eligible for *taklîf*: Ability (*qudra*);[12] and capacity (*ahliyya*).[13]

Ability, in Ghazâlî's mind, rests on one's potential to understand a command or prohibition posited by a *Sharî'a* address. He holds tenaciously to the view that implicit in every *Sharî'a* command is the command to understand the responsibility. It is impossible, as he sees it, to demand understanding from someone or something not capable of it. For 'intending' to comply with a command is necessary, and one cannot intend anything unless he comprehends it. So, inanimate objects and animals, for example,

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[12]Ghazâlî, *al-Mustasfâ*, 1:83.

[13]Ghazâlî, *al-Mustasfâ*, 1:84.

are not under obligation.[14]

As for capacity, it is reason, the instrument of discernment, that is of central import, for it is the determinant of eligibility for and liability to obligation. Ghazâlî notes that since the locus of obligation is a living human equipped with reason, an entity imperceptible by our senses, the *Sharî'a* accepts as manifest indications of sound reason the signs of maturity, namely coming of age and normal development.[15]

Ghazâlî distinguishes between man's ability to be charged with *Sharî'a* obligations—which earns a person, whether young, old, male, or female, certain rights and rewards—and the *Sharî'a* obligations which render him liable in this world and in the Hereafter for performing or neglecting commands.

The first capacity is *ahliyyat al-wujûb*, being eligible for *taklîf*. Its essential requirement is being a living human. The second capacity is described as *ahliyyat al-adâ'*, the capacity to perform, which requires from one maturity, sanity, freedom, and the like.[16]

Delving into greater detail concerning *ahliyyat al-adâ'*, Ghazâlî refers to the impossibility of obliging the minor, the forgetful, the intoxicated, the insane, and the nonexistent,[17] all of which share a

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[14]Ghazâlî, *al-Mustaṣfâ*, 1:83.

[15]Ghazâlî, *al-Mustaṣfâ*, 1:84.

[16]Ghazâlî, *al-Mustaṣfâ*, 1:84.

[17]Ghazâlî, *al-Mustaṣfâ*, 1:85.

common trait— lack of reason. He explains that it is not possible for the *Sharî'a* address to lay obligation upon a minor because of his underdeveloped faculty; nor the intoxicated owing to his temporary loss of reason through intoxication; nor the insane for his insanity; nor the forgetful for his inability to retain the address in mind.

Ghazâlî's opponent's, however, argue that since the Qur'ân has specifically addressed the intoxicated person—"*Oh believers draw not near to prayer when you are intoxicated until you know what you are saying,*"[18]—one, therefore, may be commanded without understanding the command. Ghazâlî responds that the command expressed in this verse may be interpreted in two ways.

First, this was revealed before the prohibition of alcohol. Consequently, the prohibition is not directed at prayer, rather it is directed at drinking excessively immediately before the time of prayer. Ghazâlî cites in support of this interpretation an Arabic saying, "Draw not near the night prayer when your stomachs are full," meaning do not eat in excess so that it becomes burdensome to pray.[19]

Second, the address is directed at those near intoxication but still capable of comprehending the address.[20] But this reply is weak because the verse is addressed to the entire *ummah*, not to

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[18]Qur'ân, 4:43 .

[19]Ghazâlî, *al-Mustasfâ*, 1:85.

[20]Ghazâlî, *al-Mustasfâ*, 1:84.

the intoxicated in particular. Even if we suppose the latter, it is certain that the verse would be related to them upon returning to sobriety. In any case, the address was later abrogated by the blanket prohibition of drinking alcohol.

Ghazâlî further states that an intoxicated person is responsible for his acts during his intoxication. So if he pronounces divorce or offends someone, he is liable. As for the minor, necessary expenditures, penalties, *zakât*, and other such things are indeed obligations to be fulfilled, but by his guardian. The intoxicated person, on the other hand, since he generated the acts, must be liable for them.[21]

Regarding the Ash'arite position that it is possible to lay an obligation upon a person who does not yet exist, Ghazâlî defends its possibility by saying that since the laying of obligation is known by God, it is possible for it to precede the existence of someone. The obligation is binding when he comes into being and is capable of understanding the *Sharî'a* address.[22] He gives the example of a dying father whose wife has a child in womb. The father commands that his children spend his wealth in a prescribed manner. It is linguistically and customarily possible to say that he has entrusted all of his children to carry out his will, including the unborn, provided that he is born and is later capable of understanding the command.

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[21]Ghazâlî, *al-Mustasfâ*, 1:84.

[22]Ghazâlî, *al-Mustasfâ*, 1:85.

AL-MAḪKŪM FĪHI (THE SUBJECT TO RULE, THE ACTS)

Since the essence of *taklîf* is the acts which the loci of obligation are either obligated or prohibited to perform, they are, then, that to which the *Sharî'a* address is directed. This is perhaps why Ghazâlî stipulates that a charged obligation be openly or at least potentially knowable, meaning that charging to perform the *Sharî'a* acts should be promulgated and not concealed in the mind of the Lawgiver or His Messenger. Also the locus of obligation must have the capacity to perform; that is, to possess reason enough to comprehend the intent of the Lawgiver and to understand the act required of him, either directly or through those who know. For example, the abundance of manifest signs in the physical world (nature) and the proofs existing in the Qur'ân are sufficient for any rational person to recognize the existence of God and that He is the source of obligation, according to Ghazâlî. Therefore, such a person cannot use ignorance as an excuse for justifying noncompliance.

Ghazâlî states that along with knowing the prescribed act, one must know that this act's command has been issued from the source of obligation, the only authority capable of originating commands, God. This reflects Ghazâlî's zeal to demonstrate the validity and authenticity of the sources of Islamic Law—the Qur'ân, the *Sunna*, *Ijmâ'*, and *al-Istisḥâb wa dalîl al-'aql.*

In sum, every rule wherein it is possible to understand and know its source as legitimately from the *Sharî'a,* the loci of obligation are obliged to fulfill, whether they know it directly or through those who have knowledge of the *Sharî'a*.

Concerning the nature of the acts that fall under *taklîf*, Ghazâlî requires that they be within the capability of the locus of obligation. He argues that "charging the impossible is impossible,"[23] and rejects the idea of obliging an impossible act on the grounds that it is incomprehensible to the locus of obligation. He contends that a thing, before materializing, has an existence in the mind, and it is only sought after when it comes into being or is conceived in the mind.[24] He does not hide his disagreement on this issue with Abû al-Hasan al-Ash'arî, the patriarch of many of Ghazâlî's views. On the contrary, he criticizes those of his positions that imply the possibility of obliging an impossible act.

Al-Ash'arî's Position and Ghazâlî's Reply

Ash'arî's theological position concerning human acts approximates that of the Predeterminists, holding that all human acts are created by God.[25] That is, man is essentially impotent, for God creates in man the necessary power to perform an act exactly at the time of its being and not before it in some potential form. Based on this understanding, it is possible for God, in Ash'arî's view, to command a locus of obligation to perform the acts obliged

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[23]Ghazâlî, *al-Mustasfâ*, 1:90.

[24]Ghazâlî, *al-Mustasfâ*, 1:88.

[25]Ash'arî here twists an interpretation of the verse, "*And Allâh has created you and that which you do.*" Qur'ân, 37:96.

exclusively upon another and to require him to perform impossible acts, for He creates his acts for him.

Ghazâlî provides rational and *Sharî'a* arguments against the three Textual references that Ash'arî cites in support of his position, which are as follows:

First, Ash'arî cites the verse, "*Our Lord, do not burden us beyond what we have the strength to bear . . .*"[26] from "Sûrat al-Baqara," claiming that if it were not possible to oblige an impossible act, God would not, then, have instructed His creatures to supplicate Him to remove from them that which is impossible to bear.

Secondly, since God has informed His Messenger that his opponent, Abû Jahl, will not accept his message—and it is impossible for the knowledge of God to be contradicted—then the Prophet's invitation to Abû Jahl to believe in his message is equivalent to obliging Abû Jahl with an impossibility. Thus, obliging the impossible is demonstrated, especially when one considers that Abû Jahl is charged to believe in what is revealed to the Prophet—including the fact that Abû Jahl will not believe in him.

The third point is that the objections raised against obliging an impossible act are a result of there being no *Sharî'a* Text that either indicates this or its rational inconceivability. Ash'arî quotes some verses of the Qur'ân in support of his argument that imply the charging of an impossible act, such as His statement, "*Be stone*

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[26]Qur'ân, 2:285.

or iron,"[27] claiming that although this is impossible, He still commands it. Therefore, Ash'arî holds, it is rationally conceivable for a master to require his servant to manage his concerns in two different cities simultaneously. Furthermore, there is no contradiction nor corruption in this; nor is it against popular wisdom, for all the acts of God are consistent and contain no corruption. All that He does is good.

Be that as it may, Ghazâlî says explicitly that Ash'arî's argument using the verse in "Sûrat al-Baqara" is weak because the verse is not bidding man to ask God to remove what is impossible; but rather to ask Him not to lay an obligation too burdensome and difficult. Any other interpretation, Ghazâlî says, is simply wrong, for this verse neither explicitly nor implicitly indicates other than this.

In the case of Abû Jahl, Ghazâlî says that there was no rational possibility preventing his accepting Islam—particularly when God has demonstrated both universal and Qur'ânic proofs supporting the truth of Muḫammad's messengership. Abû Jahl's course of disbelief is therefore a result of choice based on jealousy and obstinacy, not a consequence of God having determined it for him.

Finally, Ghazâlî rejects the charging of an impossible obligation regardless of whether or not it conflicts with popular wisdom on the grounds that the essence of laying obligation is bidding, which, in turn, necessarily requires something to be

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[27]Qur'ân, 17:50.

fulfilled. For commanding the performance of an act must be understood by the locus of obligation. To illustrate his point, Ghazâlî opines that it is entirely possible to command a person to move—"*Taḥarrak!*"—because movement is understood by him. But it is impossible to command him, using Ghazâlî's words, with "*Tamarrak!*" [28]—an absolutely meaningless word. Ghazâlî cites other examples to further his argument, saying that it is not rationally conceivable to require trees to sew, or to demand blackness to come from whiteness; nor is it possible to demand changing blackness into motion or a tree into a stallion.[29]

Another impossible obligation, according to Ghazâlî, is commanding the simultaneous performance of two mutually contradictory tasks. So his opponents project the scenario of a person who is in the field of a usurped farm, and who is at once prohibited by the *Sharî'a* from staying in usurped land but also forbidden to move because motion would cause damage to the crops, which do not belong to him.

Hypothetically speaking, he is essentially commanded to move and not to move at the same time. Ghazâlî dubs this kind of argument sophistry and states that a jurist in a case like this can only rule that the person leave, "to minimize harm."[30] For remaining in his position is more harmful than the alternative of

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[28]Ghazâlî, *al-Mustaṣfâ*, 1:86-87.

[29]Ghazâlî, *al-Mustaṣfâ*, 1:88.

[30]Ghazâlî, *al-Mustaṣfâ*, 1:89.

motion; and that which causes the least amount of damage, then, is not only the preponderating obligation but obedience to the *Sharî'a*.[31] Furthering his position he cites the verse, "*God charges no soul save to its capacity*,"[32] as proof that God, the Source of obligation, withholds the obliging of the impossible.

Classification of the Sharî'a Rules

Ghazâlî introduces the concept of obligation (*wujûb*) by listing its various definitions held by jurists. For example, *wâjib* has been defined as follows:

1. That which is qualified as obligatory.
2. That which one is rewarded for performing and punished for neglecting.
3. That which one must not determine to neglect.
4. That whose abandonment is considered disobedience.

To Ghazâlî, all of these definitions are deficient because they identify *wâjib* either by its effect or by one of its conditions. Thus he takes a more holistic approach in defining *wâjib* by relating it to the other categories of the *Sharî'a* rules which also qualify the acts of the loci of obligation, introducing a comprehensive sense of *wujûb* within this structure.

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[31]Ghazâlî, *al-Mustasfâ*, 1:89.

[32]Qur'ân, 2:286.

He notes that as a term *'wâjib'* is technically and linguistically used in various ways. Linguistically, *'wâjib'* can mean to fall to the ground. He cites the verse, "*When their flanks fall down [wajabat] [to the ground],*"[33] and he also cites the Arabic expression, "The sun set [*wajabat al-shams*]."[34] In theology *'wâjib'* is used to describe the necessary existence of God (*wâjib al-wujûd*). This is in contradistinction to the impossible or the absurd.

According to the *faqîhs* and the *usûlîs*, *'wâjib'* describes those acts which the *Sharî'a* declares obligatory—regardless of their being contingent, known, and such—in light of the nature of the *Sharî'a* biddings. Therefore, if the bidding is binding, the desired act is obligatory, and if it is not, the act is recommended (*mandûb*). But if the *Sharî'a* bidding makes doing or not doing optional, it is allowed (*mubâh*). On the other hand, if the *Sharî'a* bidding demands that the locus of obligation forgo an act, it is prohibited (*harâm*). But if the prohibition is not binding, then it is reprehensible (*makrûh*).

It is evident, then, that Ghazâlî in defining *obligatory* does not isolate it from the family of the five *Sharî'a* rules. Rather, he discusses its concept in light of the nature of the *Sharî'a* bidding. Therefore, to him wâjib (obligatory) or *ijâb* (obliging) is the *Sharî'a* command which bids doing. He also says that indicative of the

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[33]Qur'ân, 22:36.

[34]Among of the linguistic meanings of *wâjib* are necessary, requisite, binding, obligatory. Lane, *An Arabic-English Lexicon*, 8:2921-2923.

Sharî'a commands' binding nature—in both obligations and prohibitions—is the consequence of reward for compliance and punishment for disobedience.

Furthermore, the performance of *wâjib* results in reward in the Hereafter and its abandonment is a *cause* of punishment. However, causality here, according to him, is as medicine is to healing or striking is to pain. Yet it is not absolute causality because the effect may not show in all cases. It is possible, for example, that a person preoccupied with something not perceive pain or injury when afflicted, as in the case of a person in the midst of a fierce battle.

Claiming that this is analogous to performing an obligation or abandoning it, he manifests his *ṣûfî* inclinations, weaving them into the fabric of his legal theory. He states that God, by His divine grace, may penetrate the inner being of a person and recognize laudable and praiseworthy characters that necessitate discharging his punishment for neglecting an obligation. Yet this does not exempt the violation from causing punishment on the Day of Judgement.[35]

According to Ghazâlî, *'wâjib'* is synonymous with *'ḥatm'* (necessary), *'lâzim'* (must), *'farḍ'* (mandatory), and *'maktûb'* (to be written).[36] He refers to the Hanafite scholars who distinguish *wâjib* from *farḍ* (like Abû Zayd al-Dabbûsî), *farḍ* being an obligation

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[35]Ghazâlî, *al-Mustaṣfâ*, 1:28.

[36]Ghazâlî, *al-Mustaṣfâ*, 1:66.

firmly established on a conclusive proof—decisive in its meaning and the authenticity of its transmission. *Wâjib*, according to them, is that which has been based on conjecture and not transmitted by an overwhelming, unbroken chain of transmitters. While Ghazâlî concedes that they may use these terms, he does so on the condition that their definitions are made clear.[37]

Ghazâlî defines '***ḫarâm***,'the prohibited, as *wâjib's* antithesis in the family of the five *Sharî'a* rules. It is, therefore, that about which the *Sharî'a* declares, "Abandon it!" or "Do not do it!"[38] *Ḫarâm* may also be called '*maḫẕûr*' or '*ma'ṣiya*.'[39]

'***Mubâḫ***,' the allowed, is that wherein the Lawgiver grants option with reference to an act's performance or abandonment, neither praising nor denouncing its doer or abandoner.[40] Contrary to the Mu'tazilites, Ghazâlî regards *mubâḫ* as one of the set of five *Sharî'a* categories, and a de facto condition of those acts which the *Sharî'a* did not declare prohibited or obligatory.

'***Mandûb***,' the recommended, is that whose performance is better than neglecting, but one is not blameworthy for neglecting it. In other words, it is that part of the *Sharî'a* commands which are nonbinding.

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[37]Ghazâlî, *al-Mustaṣfâ*, 1:28, 1:66.

[38]Ghazâlî, *al-Mustaṣfâ*, 1:55, 1:66.

[39]Ghazâlî, *al-Mustaṣfâ*, 1:28.

[40]Ghazâlî, *al-Mustaṣfâ*, 1:66.

'*Makrûh*,' the reprehensible, Ghazâlî says, has been used in various ways by the *fuqahâ'*. He cites Shâfi'î using the term '*makruh*' as prohibition. It is also used with reference to that whose abandonment the *Sharî'a* prefers to its performance, although no punishment is prescribed for the latter. It may also mean performance of some act in place of another that is more proper. Finally, it can also refer to all questionable acts. However, Ghazâlî clarifies, this last usage could be confused with the *ijtihâd* of qualified authorities—for some consider *ijtihâd* to be *makrûh*. But he opposes this.

Special Classifications of *Wâjib*

In detailing a more complete analysis of the *Sharî'a* rules, Ghazâlî classifies them according to particular aspects, for instance the time within which they are to be performed. Concerning *wâjib*, for example, Ghazâlî divides it according to (a) the specificity of the obliged act; (b) whether it is a collective or individual obligation; (c) time restraints in fulfilling the obligation, which includes timely and belated performed acts; and (d) the quantity or extent of prescribed acts required to fulfill an obligation.

As for the first, prescribed obligations may give a person options between a number of acts or specify only one act to fulfill the command. These are called, respectively, '*wâjib mukhayyar*' (obligation with options) and '*wâjib mu'ayyan*' (specific obligation).[41] Obligations such as prayers, fasting, and fulfilling

[41] Ghazâlî calls '*mukhayyar*,' '*mubham*.' *Al-Mustasfâ*, 1:67.

contracts are considered *wâjib mu'ayyan*, for they, in particular, must be performed. No other acts can serve as their substitutes. Contrary to the Mu'tazilites, who object to this classification, Ghazâlî claims that there is not only rational proof for this, but *Sharî'a* proof as well, simply because the obligations specified in the *Sharî'a* fall under one of these two categories.

There remain, then, obligations which have options (*wâjib mukhayyar*). For example, in atoning for the breaking of an oath, one has the option to fast three days, to free a slave, or to feed ten indigent persons.[42] Also, the community has the option to choose the head of the Muslim state from among several eligibles. For the selection itself is an obligation, but not of a particular person.[43]

With respect to *who* falls under obligation, Ghazâlî classifies *wâjib* into either *wâjib kifâ'î* (collective obligation) or *wâjib 'aynî* (individual obligation).[44] Collective obligations are those which an individual or a group can perform on behalf of the community, discharging the rest from responsibility. For example, securing a viable system of defense is an obligation binding on the community at large. But if a part of the community acquires the necessary knowledge—including science and technology—and implements it, the community would be discharged from the obligation. Otherwise all are responsible.

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[42]Qur'ân, 5:89.

[43]Ghazâlî, *al-Mustasfâ*, 1:67.

[44]Ghazâlî, *al-Mustasfâ*, 1:68.

As for *wâjib 'aynî*, these are the obligations required from every individual who meets the conditions of *taklîf.*

Obligations are also divisible according to the time allocated to perform them. There are two time-specific kinds: Restricted obligations (*wâjib mudayyaq*) and obligations with latitude (*wâjib muwassa'*). Restricted obligations are those for which the *Sharî'a* has prescribed a single, specific time or duration that accommodates the performance of the obligation. Fasting is a clear example. Not only is the month of *Ramadân* specified, but the time between dawn and sunset, as well. Accordingly, fasting in any other month is invalid performance of the obligation (unless with excuse allowed by *Sharî'a*). Also, fasting in any other time of the day is obviously invalid as well. Likewise, fasting two months for the atonement of *zihâr* (pronouncing one's wife to be prohibited for him, like the back of his mother) must be done consecutively.

Obligations with latitude (*wâjib muwassa'*) are those whose prescribed times can accommodate the performance of the obligations—any moment within the time range—along with other acts. Such is the case with paying *zakât* upon reaching minimum requirement; it can be paid any time during the following one year period. Although the performance of these obligations may be delayed until toward the end of the prescribed time, performing the obligation becomes necessary in the last possible portion of the prescribed time where the obligation, and nothing else, can be accommodated.[45]

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[45]Ghazâlî, *al-Mustasfâ*, 1:69-70.

Regarding the performance of the obligation with respect to its time, Ghazâlî classifies them as *adâ'* (timely performance), *qaḏâ'* (belated performance or restitution), and *i'âda* (repeated performance). An obligated act performed properly in its time is considered *adâ'*. But if it is performed after the expiration of the *Sharî'a* prescribed time—restricted or with latitude—it is called *qaḏâ'*. Also, if one performs it improperly in its time and then repeats it properly while still within its prescribed time, it is called *i'âda*.

The application of the term '*adâ'* 'in relation to the word '*qaḏâ'*' has four conditions:

The first is a situation where the locus of obligation deliberately or forgetfully neglects performing an obligatory act in its prescribed time, but he must perform the act[46]—this is considered *qaḏâ'* proper.

The second is a case where there is a valid obstacle, such as menstruation preventing a woman from fasting; she must fast additional days after the expiration of the menstruation, which is considered *qaḏâ'* but only figuratively. (In fact, Ghazâlî considers it regular performance).

The third is a situation where one is validly discharged from an obligation but decides to perform it, as in the case of a traveller in *Ramaḏân*, who is not obligated to fast but still does so. Here Ghazâlî cites the Ẕâhirites who hold that fasting during his journey

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[46]A person is discharged from punishment for being heedless, forgetful, or sleeping through the time.

is invalid because God said, ". . . *A number of other days . . . ,*" where he is commanded to fast"other days." On the other hand, Karkhî, a Hanafite, agrees with the Zâhirites that one is commanded with "other days," but contends that if he decides to comply with the command and fast during the journey it is permissible for him. Ghazâlî argues that both opinions are corrupt and invalid, and regards the traveller's fasting as a legitimate performance of a duty. However, he considers it *qadâ'* in the figurative sense only, saying that the verse mentions the "other days" only to grant latitude.

The fourth is the case of a sick person. If his sickness is bearable, his situation is identical to that of the traveller. But if his sickness is life-threatening and he still decides to fast, Ghazâlî regards his action as a valid performance of an obligation. Yet if he dies, he will be punished in the Hereafter, not for fasting, but for disobeying another command to preserve his health and life.[47] Others, however, do not consider his act *adâ'* because he has gone against the exemption of not fasting.

Obligations, with reference to the quantity or extent of prescribed acts required to fulfill them, are also divided into fixed obligations (*wâjib muhaddad*) and unfixed obligations (*wâjib ghayr muhaddad*). Fixed obligations are, for example, rites of worship, payment of loans and debts, whose fulfillments are nonnegotiable and fixed either by the *Sharî'a* or by contractual agreement (loans,

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[47]". . . *And caste not yourselves by your own hands into destruction . . .*" Qur'ân, 2:195.

contributions, etc.). In fact, a person who unilaterally commits himself to contribute a fixed amount of money is obliged to fulfill his commitment to the letter.

Spending for the cause of God, enjoining what is right and forbidding what is wrong, helping the poor, and the like are obligations whose fulfillments differ from person to person in accordance with circumstance and abilities, unless the *ummah* reaches consensus on fixing one or another of them.[48]

The Hanafites' Classification of the *Ahkâm*

The Hanafites add two categories of *Sharî'a* rules to Ghazâlî's five: *fard* (binding duty) and *makrûh tahrîman* (prohibitive reprehension), which they determine in accordance with the certainty of a said rule's transmission. *Sharî'a* obligations reported by way of *tawâtur* are called either *fard* or *harâm*, depending, of course, upon their instruction. Those based on solitary report are termed *wâjib* (obligatory) or *makrûh tahrîman*. So, *wâjib* is less certain than *fard*, and *makrûh tahrîman* is subordinate to *harâm*. Thus, the *Sharî'a* rules that bid man 'to do,' according to the Hanafites, are *fard* and *wâjib*. Those that forbid him, in order of potency, are *harâm*, *makrûh tahrîman*, and *makrûh*. And, as with Ghazâlî, both the 'do' and the 'do not do' converge on the *mubâh* (the indifferent). Thus, the Hanafites classify the rules of the *Sharî'a* into seven categories.

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[48]Ghazâlî, *al-Mustasfâ*, 1:70.

Interestingly, however, al-Shâṯibî says that shortly after Ghazâlî these five, or seven, categories of *Shari'a* rules were reduced to three under the influence of *taṣawwuf*: The commanded, the prohibited, and the allowed. For violating the commanded, be it obligatory or recommended, is fundamentally violation against the Commander. And since violating God's command is out of Islamic character, a servant must not commit any of this against his Lord. It therefore became obligatory to repent against any violation, minor or major.[49]

Ghazâlî's Five Categories in Relation to one Another

It is impossible, in Ghazali's view, for the *Sharî'a* to declare one and the same act *wâjib* and *ḫarâm*, obedience and disobedience. But relative to independent circumstances, it is possible for an act's rule to change. For example, murdering an innocent person is absolutely forbidden. But executing the murderer is necessarily obligatory. Therefore, a *Sharî'a* rule upon one act may vary in relation to other factors. Ghazâlî's says that it is "possible for an act having two differing aspects, even though it is one in itself, to be sought after through one of the aspects and reprehensible by the other."[50] Furthermore, the difference in the aspects of an act is equivalent to the difference in the act itself.

An obligatory act, by definition, is distinguished from an

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[49]Abû Isḫâq al-Shâṯibî, *al-Muwâfiqât*, 4 vols. ed. 'Abd Allâh Dirâz (Beirut: Dâr al-Ma'rifa, n.d.), 3:148.

[50]Ghazâlî, *al-Mustaṣfâ*, 1:77.

allowable (*mubâh*) act. Therefore, when the obligatoriness of an act is abrogated, it does not necessarily become allowable.[51] Rather, it reverts to its pre-obligation status, the character that defined it prior to its becoming obligatory.

Reprehensible acts, like the forbidden, are antithetical to obligation. Thus, a reprehensible act is never included under a command 'to do.' It is necessarily expressed in a way that explicitly or implicitly indicates 'should not do.'

Commanding an act does not necessarily mean the prohibition of its opposite, according to Ghazâlî. That is, the imperative mood neither includes nor necessarily implies the prohibition of its opposite. Similarly, a command to do the opposite of a prohibition cannot be inferred; nor should it be construed to mean that the performance of something else is required.[52]

Taklîf and Conformity to the *Sharî'a*

Sharî'a rules may be either intended in themselves per se, or required as stipulations for the fulfillment of other rules. However, the laying down of obligation by requiring 'this' or 'that' act is not conditional upon the existence of contingent rules. True, the rectitude and validity of a said act's performance requires the fulfilling of its conditions. But it is the laying of obligation to perform a single, central act that corresponds to the *Sharî'a* proof, while accountability is independently established for each

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[51]Ghazâlî, *al-Mustasfâ*, 1:73-74.

[52]Ghazâlî, *al-Mustasfâ*, 1:81.

contingent act.

For example, Ghazâlî says, the *Sharî'a* obliges man to fulfill the five pillars of Islam: Declaration of faith, prayer, fasting, *zakât*, and pilgrimage. Nevertheless, declaration of faith is a necessary condition for the correct and valid performance of the other four pillars. Furthermore, the *Sharî'a* requires the on-going acceptance of each for one to remain Muslim. Therefore, conformity with them—each to each and all in all—is a necessary condition of *taklîf.*

As a universal state in Ghazâlî's legal doctrine, *taklîf* charges Muslims and non-Muslims alike. For "unbelievers are addressed by the details of the *Sharî'a* as well, he says. But he adds that unbelievers are not 'expected' to perform these obligations, since even if they do, their fulfillment is invalid and meaningless without their formal submission to Islam. Nevertheless, the divine obligation is addressed to all people, Muslims *and* non-Muslims.

In this he takes issue with the Hanafites, who posit that obliging non-Muslims with the details of *Sharî'a* is rationally inconceivable because of their disbelief.[53] In support of their view, they argue that one who converts to Islam is not obliged to perform restitution for having not fulfilled the *Sharî'a* obligations prior to his acceptace of Islam. Thus, he was not obligated to perform them to begin with. For had he been addressed by the details of the *Sharî'a* as an unbeliever, it would necessary follow that he be obliged to 'make up' for them after his submission. Moreover, none, including Ghazâlî himself (or since), have held such

[53]Ghazâlî, *al-Mustasfâ*, 1:92.

restitution as required.

Ghazâlî's response is centered upon the interrogation the unbelievers shall face at the hands of the believers in the Hereafter about the reason for their punishment and their own answer to the effect that they were not among those who fulfilled the *Sharî'a* obligations.[54]

> *. . . In Gardens they will question concerning the sinners, "What thrusted you into* Saqar?" *. . . "We were not of those who prayed, and we fed not the needy, and we plunged along with the plungers, and we cried lies to the Day of Doom, till the Certain came to us."*

It appears from his argument that Ghazâlî is recalling the duality of legal responsibility in Islam. On one hand, a person is responsible before the *Sharî'a* in this world; and on the other, he is responsible before the Court of God on the Day of Judgement. Only in the sense that they are accountable on the Day of Judgement is Ghazâlî's claim that the disbelievers are addressed by the *Sharî'a's* details acceptable. Otherwise, in requiring the imposition of *Sharî'a* rule upon nonMuslims he would be contradicting not only himself, but the basic principles of the *Sharî'a*.

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[54]The Ḫanafites have a reasonable answer to this, which can be summarized as follows: The disbelievers answer is figurative indicating that the original cause for punishment is that they did not accept Islam in the first place, therefore they did not pray and did not perform the *Sharî'a* details. Yet Ghazâlî does not like this answer. See the full debate in *al-Mustaṣfâ*, 1:92.

Sabab and the *Sharî'a* Rules

Although revelation itself has been completed, Ghazâlî reminds that certain *Sharî'a* rules are effected by the recurrence of evident manifestations. Whenever these signs appear, it becomes necessary to perform or refrain from one or more acts, in accordance with the five *aḫkâm*. This sign is termed '*sabab*' (cause). In ritual performance for example, when the sun sets, prayer is obligated; when a year passes, *zakât* is due; when *Ramaḏân's* crescent is sighted, fasting is incumbent. Regarding transactions, the marriage contract effects the mutual rights and marital obligations of a man and woman; the divorce contract abrogates them, setting new guidelines; death is a cause for inheritance; the contract of sale causes ownership.[55]

The real cause for these obligations is the *Sharî'a* address issuing from God. But the technical *sabab* is the apparent sign with which revelation has conjoined the performance of specific acts.

'*Ṣaḫîḫ*' (valid), '*bâṯil*' and '*fâsid*' (invalid) are terms used to describe the validity of performing a *Sharî'a* act. The valid act, in Ghazâlî's scheme, is one that corresponds to the *Sharî'a* rule, regardless of whether it is performed in restitution (*qaḏâ'*) or on time. The *bâṯil* act, which is synonomous with the *fâsid* act, is one that does not fulfill the *Sharî'a's* requirements.

However, the principle approach of the Ḫanafite jurists, or the *fuqahâ'* as they are called, defines valid performance as one that

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[55] Ghazâlî, *al-Mustaṣfâ*, 1:93.

discharges responsibility, removing the need for restitution.[56] The dispute between the two views is reflected in the sphere of ritual performance in the following case. If a person prays thinking that he is ritually pure, Ghazâlî and the so-called *mutakallim* jurists regard his prayer as valid; for prayer itself has been adequately performed. But if he later remembers that he was not ritually pure, then restitution is established by a different command. Based upon the Hanafite definition, however, the same prayer is invalid because it does not discharge the person from his obligation to pray, since he did not fulfill all the prescribed *Sharî'a* requirements.

Concerning business transactions, a valid contract (*al-'aqd al-muthmir*), according to Ghazâlî, is one that is effected and stipulates the fulfillment of all agreements.[57] Hence, a contract that is not effected is invalid. Yet the Hanafites distinguish the invalid contract (*bâtil*) from the irregular (*fâsid*). For the latter is essentially a valid *Sharî'a* contract that includes a violation or a stipulation that is in disregard of the *Sharî'a*, such as a sales contract that includes a usury clause. In principle, the agreement is lawful but the inclusion of the usury stipulation impairs it.

This example illustrates a fundamental difference between the approaches of the *mutakallimûn* and the *fuqahâ'*. A contract of sale stipulating usury is flatly rejected as invalid by the

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[56]Ghazâlî, *al-Mustasfâ*, 1:94.

[57]Ghazâlî, *al-Mustasfâ*, 1:95.

mutakallimûn, Ghazâlî included. The Ḥanafites on the other hand contend that what is invalid here is the stipulation of usury. But the rest of the contract may be valid.

These distinctions are technicalities, as Ghazâlî notes. However, they help one to properly understand the application of these terms in the legal writings of both schools.

In sum, Ghazâlî's legal doctrine with respect to the *Sharî'a* rules establishes that they (a) originate from God and are manifested through revelation in the *Sharî'a* address; (b) adhere to the acts of the loci of obligation as he detailed their conditions; (c) are classified into five categories with reference to the bidding of the *Sharî'a* 'to do' or 'not to do'; and (d) are divisible into subcategories according to their prescribed time, requirements of performance, and validity. Before introducing Ghazâlî's discussion on the *Sharî'a* sources it is important to point out his concept of the *Sharî'a* address—especially regarding the way of its transmission from God to man.

MANIFESTATION OF THE SHARĪ'A ADDRESS

Only through the divine address does man become aware of his obligations. According to Ghazâlî, the address is revealed as follows: an angel or a prophet receives it directly from God; a prophet or *walî* hears it from an angel; or the people hear it from their prophet.[58] However, Ghazâlî, although accepting that a *walî* may hear it from an angel, does not consider a *walî* a source

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[58]Ghazâlî, *al-Mustaṣfâ*, 1:337.

through which the *Sharî'a* is derived—a right exclusively reserved for a prophet.[59]

In supporting his argument, he acknowledges that both angels and humans as created beings hear and see through the faculties of audition and sight. This, however, implies that the divine address necessarily originates from God in a mode similar to the established conventions of communication, namely words, sounds, gestures, signs, etc., which, in Ghazâlî's view, seemingly contradict the attributes of God. Therefore, he affirms that the speech of God does not come in the form of signs or sounds, nor is it patterned on an established linguistic norm. Rather, God is able to create *within* man or angel—without the intermediacy of sounds, letters, or signs—necessary knowledge of three things: (a) recognition of the source of the speech, the Addressor; (b) knowledge that what is being experienced is His speech; and (c) comprehending what has been imparted, which may be a command, prohibition, etc., or information.

Ghazâlî's intimacy with theological and philosophical issues compelled him to discuss the likely objections to his positions. Among them is that a prophet or an angel can only hear the divine address through his created faculty, which requires that the divine address, in essence, be created similarly to the speech of creatures.

Ghazâlî argues that creatures need the medium of language to convey what is in their minds, and that God alone is capable of

[59]This shows Ghazâlî's *ṣûfî* inclinations.

creating necessary knowledge in the minds of His creatures without an intermediary. Ghazâlî, in illustrating the difficulties of comprehending this, employs his fond approach of providing analogies, citing the inability of a person born blind to comprehend color.

So, he states that when a prophet receives revelation via an angel, it may be through actual words and sounds, conveying the meaning of the speech of God. Yet, these devices are the originated acts of the angel, not the actual words of God. However, they are in the figurative sense considered the speech of God, for one may say, "I have heard the poetry of al-Mutanabbî," without being his contemporary nor ever having met him.[60] Yet the statement necessarily indicates that he has heard it from someone else.

As for the community hearing the message from their prophet, it is similar to the prophet receiving it from an angel. They understand his address through the language to which they are accustomed. The expressions are either explicit in conveying the revealed meaning or are liable to various interpretations. Their signification, therefore, is indicated through the evidence of the language itself or through rational proof.

Ghazâlî, in a legal work like *al-Mustaṣfâ*, was not only pressed to explain the manner through which the divine address arrives, but his treatment also reflects the theological discussions preponderating in his time and the intense debate concerning the attributes of God between the various theological trends that

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[60]Ghazâlî, *al-Mustaṣfâ*, 1:101 and 1:339.

emerged in the formative centuries of the sciences. Thus, he brought remotely related discussions of theology into the sphere of the principles of jurisprudence—the very practice he criticized in the Exordium to *al-Mustaṣfâ*, i.e. theologians, grammarians, and legists stretching the details of their particular disciplines in the treatment of *uṣûl*.[61]

[61]Ghazâlî, *al-Mustaṣfâ*, 1:9-10. In his own words:

"But this is exceeding the limits of this science and mixing it with theology. The theologians from among the *uṣûlîs* have elaborated [excessively] in this regard, mainly because theology overwhelmed their natures. The love of their profession compelled them to mix it with this art, just as the love of the language and [its] grammar forced some jurists to mix parts of grammar with *uṣûl*. Thus, they mention about the meanings of prepositions and inflections certain things which specially pertain to the science of grammar, just as the love for *fiqh* has led a group of legists from Transoxania, namely Abû Zayd [al-Dabbûsî], رحمه الله, and his followers, to mix many questions about the details of *fiqh* with its principles. Although they brought this by way of examples to illustrate how a principle leads to certain detailed legal points, they did so in excess."

CHAPTER II

THE QUR'ĀN
THE FIRST *SHARĪ'A* SOURCE

Ghazâlî does not allow for acceptance of the popular classification of the *Sharî'a* sources without stressing the unicity of their divine origin, which has been manifested and communicated to us through the utterances of the Prophet by way of the Qur'ân and his canonical statements. Aside from the fact that its formal definition occurred after its conveyance by the Prophet, Ghazâlî reminds that analysis is an instrument of human understanding; thus, the distinction between the Qur'ân—the speech of God (*kalâm Allâh*)—and the teachings of the Prophet, and the separation of these two from the consensus (*ijmâ'*) of the Community, the *ijtihâd* (original thinking) of the *mujtahids*, and so on is only a formal one. He is, nevertheless, adamant that every student of these 'sources' bear in mind the unicity of their divine origin.

Ghazâlî, like all Muslims, holds that the Qur'ân is the speech of God (*kalâm Allāh*). Yet from this simple definition—more precisely from the word *'kalâm'*—evolved the elaborate science of *'ilm al-kalâm* in Islam's formative era. Literally hundreds of Muslim scholars before and after Ghazâlî delved deep, and often with great controversy, into theological speculation, resulting in the

development of theological affiliations that influenced most of the Muslim sciences.

While Ghazâlî argues convincingly in *al-Mustasfâ* for the purification of the science of *usûl al-fiqh* from the elements of other sciences, he himself seems to bow to the pressures of the question-raising of *kalâm*, introducing his discussion of the very first *Sharî'a* source through the door of theology. Indeed, he begins with linguistic analysis of the term *'kalâm'*, itself. It is applicable to the utterances of any language conveying meanings inherent in the mind, he says, adding that it is difficult to discern the literal meanings from the figurative.

He posits also that the speech of God is one indivisible attribute, but despite its unicity includes all meanings of speech, just as knowledge is one yet includes all known objects and facts. In addition, the speech of God is different than human speech. For no human can express meanings inherent in his mind by means other than sounds, signs, or gestures. But God is capable of imparting His knowledge in His creatures immediately. In emphasizing this, Ghazâlî takes issue against the Mu'tazilites' claim that the Qur'ân is created. Thus, it is clear that the substance of these discussions is not directly related to jurisprudence.

Be that as it may, Ghazâlî's definition of the Qur'ân as "that which has been transmitted to us through *tawâtur*[1] between the

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[1]An elaborate discussion on *tawâtur* will follow in this introduction in the chapter on *Sunna*. See also Ghazâlî, *al-Mustasfâ*, 1:132-140.

two covers of the *Mushaf* [Codex] based on the seven well-known recitations"[2] is founded on two aspects: The recording of the Qur'ân in writing; and its verbal transmission through *tawâtur.*

Concerning the *Mushaf,* he only recognizes what the Companions have agreed to record before the inclusion of diacritical marks or partitioning. As for the verbal transmission, he does not accept other than the seven established recitations. They have been transmitted through *tawâtur*, according to Ghazâlî, and are consistent with the accepted written *Mushaf.* Hence, he rejects copies attributed to individuals, such as b. Mas'ûd, and sects or groups, like the Shî'ites. Verbal reports not transmitted through *tawâtur* are also to be rejected, for *tawâtur* is the main criterion decisively securing an authentic link of the Qur'ân to the Prophet and, therefore, to God.

It is interesting that Ghazâlî did not include inimitability (*mu'jiz*) in his definition of the Qur'ân as others have.[3] This is so for three reasons: First, he views the function of inimitability as asserting the truth of the Prophet, not defining the Qur'ân; second,

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[2]Ghazâlî, *al-Mustasfa,* 1:101.

[3]Compare Ghazâlî's position with that of Sayf al-Dîn al-Amidî, in *al-Ihkâm fî Usûl al-Ahkâm*, 4 vols. (Beirut: Dâr al-Kutub al-'Ilmiyya, 1980), 1:211, where he follows Ghazâlî's position. See also al-Subkî, *Jam' al-Jawâma'* (which is published with Hâshiyat al-Bannânî), 1:223. Most of the modern authors of *usûl* include inimitability in their definition. See Husayn Hâmid Hassân, *Usûl al-Fiqh* (Cairo: Dâr al-Nahda al-'Arabiyya, 1970), p. 260; Muhammad Hasan Hîtû, *al-Wajîz fî Usûl al-Tashrî' al-Islâmî* (Beirut: Mû'assasa al-Risâla, 1983), p. 99; and Abû al-'Inîn Badrân, *Usûl al-Fiqh al-Islâmî,* (n.p.: Mu'assasa Shabâb al-Jâmi'a, 1984), p. 67.

the Qur'ân itself challenges Arabs to produce a verse similar to its verses, which implies that part of a verse, a half or a third, may not be inimitable; third, it is conceivable rationally that words from other than the Qur'ân may be inimitable. Therefore, the Qur'ân is by nature inimitable; but inimitability cannot define it.

Ghazâlî, however, becomes distracted not only by discussions of *kalâm;* he finds irresistible certain relatively minor *fiqhî* controversies pertaining to the Qur'ân that he primarily against with the Hanafites. Abû Hanîfa, for example, requires three consecutive days of fasting for the atonement of breaking an oath, relying on the authority of b. Mas'ûd's recitation, *"Then fast three days 'consecutively.' . . ."*[4] Although this recitation is not *mutawâtir*, it can be considered a valid solitary report, according to Abû Hanîfa. Ghazâlî, however, rejects this on the ground that if b. Mas'ûd's report was actually of the Qur'ân, it would have been obligatory for the Prophet to promulgate it to the Community at large and for the Community to transmit it through *tawâtur*. It would not have been permissible for the Prophet to disclose it confidentially to one person, be he b. Mas'ûd or anyone else. But since the community did not transmit it, we know conclusively that

[4]The verse in the Qur'ân, 2:196, does not include the word *consecutive*, although in this report attributed to Ibn Mas'ûd it is added. For references to the *hadîth*, see A. J. Wensinck, *Concordance et Indices de la Tradition Musulmane*, 7 vols. (Leiden: E. J. Brill, 1936-1969), 1:263. However, this addition is attributed to Ubayy b. Ka'b in Mâlik b. Anas, *al-Muwatta'* 2 vols. ed. Muhammad 'Abd al-Bâqî (n.p.: Dâr al-Turâth al-'Arabî, n.d.), 1:305. This report is also attributed to Ubayy in Abî al-Qâsim Mahmûd Zamakhshari, *Kashshâf* (Beirut: Dâr al-Ma'rifa, n.d.), 1:345.

either b. Mas'ûd is mistaken or that it is his opinion and should be treated as such, not as part of the Qur'ân.[5]

Another issue that Ghazâlî raises is that of *basmala*, "In the name of God, the Merciful, the Compassionate" (بسم الله الرحمن الرحيم). Al-Shâfi'î holds that since reciting "Surat al-Fâti<u>h</u>a" in prayer is obligatory and *basmala* is a verse of it, then whosoever does not recite it during prayer is not fulfilling his obligation. Thus, his prayer is invalid. But Abû <u>H</u>anîfa considers *basmala* to be a verse only of "Surat al-Naml" and not necessarily a verse of "Surat al-Fâti<u>h</u>a." Accordingly, he maintains that even without reciting *basmala*, the prayer is valid.

Though *basmala* is more properly a matter of *fiqhî* detail not essentially related to the sources of Islamic jurisprudence, Ghazâlî devotes to it nearly one third of his treatment of the Qur'ân. In defending al-Shâfi'î's opinion against the Hanfites and al-Bâqillânî, the Mâlikite,—who holds al-Shâfi'î to have erred in insisting that *basmala* is necessarily the first verse of every *sûra*—Ghazâlî responds that the obligatoriness of reciting it in prayer is based on a *<u>h</u>adîth* requirement to include it in recitation, not on the argument that it is part of the Qur'ân.[6]

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[5]Ghazâlî, *al-Musta<u>s</u>fâ*, 1:101.

[6]Abû Ja'far Mu<u>h</u>ammad b. Jarîr al-<u>T</u>abarî has treated this issue at greater length in his commentary on the Qur'ân, *Jâmi' al-Bayân 'an Ta'wîl 'ây al-Qur'ân*, 3d ed. (Cairo: al-<u>H</u>alabî Press, 1968), 1:50-54.

THE LANGUAGE OF THE QUR'ĀN

Ghazâlî maintains that awareness of Arabic's linguistic applications and its various ways of conveying meanings is essential for acceptable comprehension of the Texts.[7] One can infer from his remarks on the language of the Qur'ân, as well as the *Sunna*, that he distinguishes between linguistic usage relative to a word's original meaning, clarity, and inclusiveness. He seems, for instance, to first locate a term between extremes of literal and figurative meaning, placing it according to the degree of its metonymical and explicit usages. He may then consider it in light of the clarity with which it imparts its meanings, be it evident, decisive, precise, ambiguous, etc. There remains then the term's scope or exclusivity of meaning—that is, its relative generality or particularity. And as such analyses imply, he objects to those who deny the existence of figurative usage in Qur'ân.[8]

THE ARABICITY OF THE QUR'ĀN

Jurists examining Islamic legal sources, Ghazâlî included, treat the question of the Arabic nature of the Qur'ân for the obvious

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[7]This especially denotes the Qur'ân and *Sunna*.

[8]By the end of the second century Abû 'Ubayda Ma'mar b. al-Muthannâ (d. 210 H.) wrote *Majâz al-Qur'ân* and this work was considered as rational interpretation of the Qur'ân (*tafsîr bi al-ra'y*) for which he was severely criticized, first by his contemporaries, such as al-Farra', al-Asma'iy, and al-Zajjâj. Yet *Majâz al-Qur'ân* remained a prominent source over the centuries, which Fuat Sezgin edited as his doctoral thesis and published as Abû 'Ubayda Ibn al-Muthanna al-Taymiy, *Majâz al-Qur'ân*, 2 vols. ed. Fuat Sezgin (Cairo: Muhammad Sâmî Amîn al-Khânjî, n.d).

reason that understanding the language of the *Sharî'a* address, of which the Qur'ân is clearly the prime element, is prerequisite for investigation. Nevertheless, the Book itself provides the motive, for it is consciously an "Arabic Qur'ân."[9] This apparently compelled the jurists to address this issue since it involves the premier *Sharî'a* source, the Book.

While it may well be more properly a subject of linguistics than of Islamic jurisprudence, Abû Bakr al-Bâqillânî's claim that the Qur'ân is purely Arabic, void of foreign words, and his correlation of this with its inimitability (*i'jâz*), coupled with Ghazâlî's open criticism of him in *Mustasfa* as extreme, may more precisely reflect a *fiqhî* dispute regarding the translation of the Qur'ân and an early Hanafite position permitting its recitation in Farsi during the daily prayers.[10]

In the midst of his preoccupation with the nature of the Address of the Qur'ân, the recorded Qur'ân, and its transmission through *tawâtur*—in his tendency to bogg down in the details of *kalâm* and *fiqh*— Ghazâlî neglected to discuss a more evident

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[9]Qur'ân, 12:2.

[10]Later Hanafite sources have said that Abû Hanîfa renounced this position. For more details, see Abû Bakr b. Mas'ûd al-Kâsâni, *Kitâb Badâ'i' al-Sanâ'i' fî Tartîb al-Sharâ'i'*, 7 vols. (Beirut: Dâr al-Kitâb al-'Arabî, 1982), 1:112; Ibn Amîr al-Hâjj, *al-Taqrîr wa al-Tahbîr*, 3 vols. (Cairo: Amîrî Press, 1316-1318 H.), 2:4; Muhammad Mustafâ Shalabî, *Usûl al-Fiqh al-Islâmî* (Beirut: Dâr al-Nahda al-'Arabiyya, 1978), 1:76; and Wahba al-Zahîlî, *al-Fiqh al-Islâmî wa Adillatu*, 2nd ed. 8 vols. (Damascus: Dâr al-Fikr, 1985), 1:655.

juristic side of the Qur'ân: Its relatively few verses that explicitly enact law and the implications of this.

However, he concludes his chapter on the Qur'ân with a brief discourse on what one should know about its language and method in indicating rules.[11] Based on the verse, "*The Book, wherein there are perspicuous verses—they are the essence of the Book—and others which are allegorical . . . ,*"[12] he suggests that the words *perspicuous* and *allegorical,* since no Text explains them explicitly, should be understood in light of what linguists acknowledge as their literal meanings. Simply, the perspicuous means either (a) verses that are explicit without ambiguity or (b) ordered in a way that yields certain meanings, be they evident or inferential, provided that contrariety does not occur. Ghazâlî notes that the perspicuous, then, is opposite to obscurity, not allegory.

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[11]For a more concise account of the structure, spirit, legislation, and major themes of the Qur'ân, see Fazlur Rahmân's chapter on the Qur'ân in *Islam*, pp. 30-42; the *Encyclopaedia of Islam*, new ed. "Qur'ân," s.v. J. D. Pearson; and Muhammad 'Abd Allâh Dirâz's dissertation on *La Morale du Koran*, translated into Arabic as *Dustûr al-Akhlâq fî al-Qur'ân*, 4th ed. trans. 'Abd al-Sabûr Shâhîn (Beirut: Mu'assasat al-Risâla, 1982). Among the clasical works are Badr al-Dîn al-Zarakshî, *Burhân fî 'Ulûm al-Qur'ân*, 3d ed. 4 vols. ed. Muhammad Abû Fadl Ibrâhîm (n.p.: Dâr al-Fikr, 1980); and Jalâl al-Dîn al-Siyûtî, *al-Itqân fî 'Ulûm al-Qur'ân*, 4 vols. ed. Muhammad Abû Fadl Ibrâhîm, (Cairo: Dâr al-Turâth, n.d.). On the vocabulary of the Qur'ân see al-Râghib al-Asafahânî, *Mu'jam Mufradât alfâz al-Qur'ân*, ed. Nadîm Mar'ashlî (Beirut: Dâr al-Kitâb al-'Arabî, n.d.); and Majd al-Dîn Muhammad b. Ya'qûb al-Fayrûzabâdî, *Basâ'ir Dhawâ al-Tamyîz fî Latâ'if al-Kitâb al-'Azîz*, 8 vols. ed. Muhammad 'Alî al-Najjâr (Beirut: Maktaba al-'Ilmiyya, n.d.).

[12]Qur'ân, 3:7.

The allegorical verses, therefore, contain ambiguity in word or concept. For example, the word '*lams*' may mean *touching* or *sexual intercourse.* Or the apparent meaning of one of God's attributes may be misconstrued to correspond with a human characteristic.

CHAPTER III

THE *SUNNA* THE SECOND *SHARĪ'A* SOURCE

From the emergence of the Islamic sciences in the third century until relative stability in their formation in Ghazâlî's time, the technical meaning of '*Sunna*' varied among *mutakallims*, *muḫaddiths*, *faqîhs*, and *uṣûlîs*. Though we find common elements in their respective views of *Sunna*, it should be noted that their emphases differed. The focus of the *mutakallims* was on adherence to the larger community (*ahl-al-Sunna*) and its dogma. Thus whoever seceded became heretic (*ahl-al-bid'a*). The efforts of the *muḫaddiths* were directed to recording and authenticating the Prophetic traditions. And the *faqîhs* concerned themselves with acts identified as *Sunna*, that is, recommended as opposed to obligatory.

The *uṣûlî* treatment of the term '*Sunna*,' however, came somewhat later, after the development of these sciences and the detailing of their issues. Consequently, *uṣûl* considered their usages. The major *uṣûlî* preoccupation with *Sunna* is its validity as a *Sharî'a* source and its place among the other sources. Its principle treatment of *Sunna* includes all that has emanated from the Prophet, aside from the Qur'ân, be it statement, deed, or tacit

approval of a canonical nature; that is, all that expresses *taklîf* (charging with obligation).

Ghazâlî's approach to *Sunna* in *al-Mustasfâ* does not, in general, depart from that of the classical one. He is, however, distinguished from many of his predecessors and successors in his organization, reasoning, and utilization of logic and philosophy in presentation—particularly with reference to the type of knowledge imparted from specific transmissions. What is indeed interesting is that the jurist Ghazâlî, who details the fine points of *Sunna* in meticulous fashion—be it in *al-Mustasfâ* or in his earlier *usûlî* work, *al-Mankhûl*—neglects the application of these principles on the reports which he cites in others of his works, to the degree that he has earned the dubious distinction of being weak in reference to *hadîth*.

In any case, Ghazâlî bases his arguments for the validity of *Sunna* as a *Sharî'a* source on the Qur'ân in four ways:

First, God has commanded believers to obey the Prophet in numerous verses: "*Whatever the Messenger gives you, take; and whatever he forbids you, give over.*"[1] Also, "*Obey God and the Messenger.*"[2] Moreover, obeying him is regarded as part of obedience to God: "*Whosoever obeys the Messenger thereby obeys God.*"[3] The Qur'ân further declares that the Prophet is the proper

[1]Qur'ân, 59:7.

[2]Qur'ân, 3:32.

[3]Qur'ân, 4:80.

source for resolving dispute: *"If you should quarrel on anything, refer it to God and the Messenger."*[4] In fact, the Book declares that rejecting the rule of the Prophet equals departure from faith: *"By your Lord, they will not believe until they make you the judge regarding the disagreements between them."*[5]

Second, the Qur'ân testifies that the Prophet does not *"speak out of caprice."*[6] Thus what he utters other than the Qur'ân is, as Ghazâlî calls it, revelation not for recitation (*wahy ghayr matluww*). Thus, what issues from him is a valid *Sharî'a* source.

Third, the Qur'ân includes general commands which require detail for their implementation. In the area of worship, there is, for example, the command, "Perform the prayer!" (*Aqîmû al-salâ*); in the areas of inheritance, marriage, and punishment, their details, says Ghazâlî, "came first in principle. Then the Prophet gradually elaborated who should inherit and who should not, whose marriage is lawful and whose is not, what is valid to sell and what is not."[7] The Prophet has fulfilled this in compliance with the instruction of the Qur'ân: *"We have sent down to you [O Muhammad] the remembrance that you may make it clear to mankind."*[8]

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[4]Qur'ân, 4:59.

[5]Qur'ân, 4:65.

[6]Qur'ân, 53:3.

[7]Ghazâlî, *al-Mustasfâ*, 1:372-373.

[8] Qur'ân, 16:44.

Accordingly, if the elucidation of the Prophet, which is his *Sunna*, was not a valid *Sharî'a* source, then implementing the Qur'ânic commands would not have been possible.

Fourth, *ijmâ'* (consensus) indicates the validity of the *Sunna* as a *Sharî'a* source.[9] This is reflected in the conduct of the entire *ummah*, beginning with the Companions. Both during the Prophet's lifetime and after his death, they obeyed him and did not differentiate between commands he attributed to the Qur'ân and others he himself issued.

This being the case, the *Sunna* must be a valid and obliging *Sharî'a* source. This is evident from those who witnessed the Prophet and heard his *hadîth* from among his Companions. As for the succeeding generations, transmission is the only channel to establish the *Sunna*. Ghazâlî recognizes that the transmission of reports varies in authenticity depending on the number of transmitters, their integrity, the links between reporters, and the like.

This perhaps is what required him to discuss the details of (a) reports and the channels by which they have reached us; (b) the concept of *tawâtur* plus the nature of the knowledge it imparts, solitary reports and the conjectural knowledge they impart, and the necessity of fulfilling obligations on their bases and relying on them with regard to cases of common necessity;[10] and (c) the

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[9]Ghazâlî, *al-Mustasfâ*, 1:100.

[10]Ghazâlî, *al-Mustasfâ*, 1:171.

qualifications of reporters and the distinction between relating a report and testifying in court or endorsing a reporter.

DEFINITION AND TYPES OF REPORTS

The second source from which the *Sharî'a* rules are derived is the *Sunna* of the Prophet. Since the Companions were the only ones to have had direct contact with him, the biddings of his *Sunna* would not be known by any of the succeeding generations—and therefore not followed—were it not for its transmission. For this reason Ghazâlî pays special attention to the channels by which the *Sunna* of the Prophet has been transmitted, ranking them according to their strength in indicating the *Sharî'a* rules.

Unlike the *muhaddith* (traditionist) whose treatment of *mutawâtir* and solitary (*ahâd*) reports focuses on their number of transmitters and precision of wording, Ghazâlî, the jurist-philosopher, places the question of transmitting reports (*akhbâr*) within the larger context of his theory of knowledge. He inquires into the definition of reports, their avenues of transmission, and what sort of knowledge they impart to the mind, basing their acceptance or rejection on the degree of knowledge they yield. For example, does a particular report impart sure knowledge, or does it remain in the sphere of conjecture? What are the criteria that govern this?

Ghazâlî delves into these questions providing a guide with which an inquirer into the *Sharî'a* sources—especially *Sunna*—can sort out the body of transmitted reports attributed to the Messenger and know the authentic from the questionable or the

fabricated. He further examines contradictory sound reports relative to one another in order to distinguish them in application.

Technically, a report (*khabar*) is that which a person voluntarily expresses. If it remains a meaning inherent in the mind, it is not a report. Thus, what the sleeping or the coerced verbalize is not a report, for neither person freely intends to disclose what is in his mind. Also, Ghazâlî refutes the definition of reports as statements in which truth *and* falsehood may enter by pointing out that this is contradictory.[11] Instead, he defines them as statements in which truth *or* falsehood may enter. Some reports are necessarily true and must be accepted. Others can only be false and must be rejected.

Reports impenetrable by falsehood and so necessarily accepted are presented here in the sequence that Ghazâlî uses in *al-Mustaṣfâ*, apparently with reference to their relative strength.

1. *The speech of God* is not at all liable to falsehood, for it is impossible for Him to lie. Based on this, Ghazâlî insists that it is necessary to believe in and assent to any report that has been conclusively established as coming from God.

2. *The reports of the Messenger*, since his truthfulness has been established by God and demonstrated by miracle, are true. Indeed, according to Ghazâlî, it is absurd that Allah should support liars with demonstrated miracles. Its supposition implies God's impotency and thus he would be unable to support His messengers with miracles. It is

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[11]This definition has been generally accepted in *uṣûlî* references — especially by the Mu'tazilites. See Abû al-Ḥusayn al-Baṣrî, *al-Mu'tamad fî Uṣûl al-Fiqh*, 2 vols. ed. Muḥammad Ḥamîdullah (Damascus: Institu Fransais Damas, 1965), 2:542-546.

evident that inability is impossible on the part of the Omnipotent.
This category of reports also includes canonical matters that have been mentioned or practiced in the presence of the Messenger, provided that he was attentive to them and did not disapprove them, thus assenting silently.

3. *Reports of the entire ummah* are to be accepted, for based on the statement of the truthful Messenger, the *ummah* is immune from error.

4. *Reports which conform* to the statements of Allah, the Messenger, and the *ummah* must be accepted as true.

5. *Reports conveyed before a large number*[12] of people who do not reject their recounting—though ordinarily they would be compelled to do so were they false—are to be accepted. Their silence proves the reports' validity. Ghazâlî further states that many reports were, in fact, related and approved in this fashion; that is, before a large number of Companions who did not object to them. Moreover, he asserts that this is tantamount to accepting the reports of the Companions, for they would have objected against those relating false reports to them.

6. *Mutawâtir*[13] reports must be regarded as true.

There are also reports, says Ghazâlî, which are outright impossible to regard as true and so must be rejected.

1. Reports that contradict *mutawâtir* texts, decisively explicit *Sharî'a* statements—from either the Qur'ân or *Sunna*—or contradict *ijmâ'* are rejected because they imply charging

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[12]It should be noted that Ghazâlî did not indicate a specific number. A discussion will follow concerning the required number for *tawâtur*.

[13]A definition of *tawâtur* and *mutawâtir* reports will follow.

God, His Messenger, and the entire community with lying, which is impossible.

2. Reports denied by a large number of people who (a) state that they have witnessed the reported event and do not concur with what is alleged and (b) with whom collusion is in the nature of the case impossible are rejected.

3. Reports that are necessarily rejected by reason, the senses, *mutawâtir* reports, and so on are not accepted, such as reports indicating the coexistence of contradictions or that the Day of Resurrection has already taken place, and the like.

4. Reports that are neglected by a vast majority who ordinarily would be expected to promulgate them widely due to their nature, and the abundant impetus to relate them, are rejected. For instance, if the Messenger were to have reported the coming of a prophet after him; or that it is obligatory to fast the month of *Shawwâl* in addition to *Ramaḏân;* or that he specified the person succeeding him in the imamate. Such reports, were they true, would have immense impetus for transmission. However, the silence of the Companions, the Successors, and those after them about reporting such things proves their fabrication and necessarily calls for charging the individuals relating them with lying.
There are reports which do not fall within these two classifications, being neither overtly true nor false, thus remaining inconclusive. Judgement must be suspended concerning these reports, according to Ghazâlî. So one cannot act based on them.

After qualifying reports broadly according to their source and nature and their conformity with reason and the consensus of the *ummah*, he discusses how reports in general have come to be known. Essentially, he classifies them according to their transmission into two major categories, *tawâtur* and *aḫâd*, the first of which he treats at great length.

Tawâtur Reports

The very basis of the *Sharî'a* depends on acquiring *knowledge* of what actually issued from the Prophet. Since the Companions were the only ones who have directly heard and witnessed the utterances and actions of the Prophet, our knowledge of what he said, therefore, hangs entirely on the intermediacy of reporters, not on empirical knowledge. However, Ghazâlî maintains that a *tawâtur* transmission (unlike an *aḫâd* solitary report) is capable of yielding a knowledge equivalent to the knowledge imparted by direct experience, thus refuting the *Sumaniyya*[14] who hold that the only way to acquire knowledge is through direct perception. He devotes considerable attention to establishing *tawâtur* as one of the universal sources of necessary knowledge. This is particularly important in *uṣûl* when considering that Sunna is a source of *Sharî'a* rules.

In any case, literally, '*tawâtur*' signifies the ceaseless recurrence of something.[15] It is said, "*Tawâtarat al-khayl,*" "The horses came (continuously) one after another"; and "*Tawâtarat al-*

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[14]al-Ghazâlî, *al-Mustaṣfâ*, 1:132.

[15]For the linguistic meaning, see Lane, *An Arabic-English Lexicon*, 8:2917-19; and Ibrâhîm Musṭafâ et al., *al-Mu'jam al-Wasîṭ*, 2:1020-21. For the technical meaning, see Ṣubḫî al-Ṣâliḫ, '*Ulûm al-Ḫadîth wa Muṣṭalahu*, 146-151; 'Alî b. Aḫmad b. Ḫazm, *Iḫkâm fî Uṣûl al-Aḫkâm*, 8 vols. (in two) ed. Aḫmad Muḫammad Shâkir (Cairo: Maktaba al-Khanjî,1926-1928), 1:104-137; and Abû Ḫâmid Ghazâlî, *al-Mankhûl min Ta'liqât al-Uṣûl*, ed. Muḫammad H. Hîtû (Beirut: Dār al-Fikr, n.d), p. 235-244.

kutub"; "The books came one after another." Therefore, a *mutawâtir* report is one whose narration is told from one to another without stopping.

As for the technical usage of the *uṣûlîs* and the *muḥaddiths*, it is a report transmitted by an unbroken chain of an overwhelming number of reporters where it is rationally and in the nature of the case impossible for them to collaborate on lying and fabricating.

Accordingly, Ghazâlî requires that for a report to be considered *mutawâtir* and so necessarily accepted, it must meet each of four conditions, thus conforming to the technical requirements of *tawâtur*.

1. The report must be based on certainty, not conjecture or opinion. To illustrate this, Ghazâlî gives an example of the residents of Baghdad—who certainly constitute the number for *tawâtur*—reporting seeing a person who they suspect is Zayd. This cannot be regarded as *tawâtur* because they are not certain of his identity. So the report is doubtful.

2. The reporter must base his statement on something perceptible, for *tawâtur* does not apply concerning rational positions, opinions, or other matters which cannot be perceived. Such is the case when a group of people report on the temporal origination of the world. For it is impossible for them to perceive it, let alone witness it. So this cannot be regarded as a *mutâwatir* report.

3. All of these requirements must be met at every stage of the transmission from one generation to the next—from the first to the last. Some reports, for example, may begin by one or a few persons. They may relate it to many other people who repeat this to the next generation and so on. Eventually the number for *tawâtur* is constituted and the report is relayed. This is not *tawâtur*.
   This requirement in particular is removed from the witnessed event and is more relevant to the transfer and

reception of the report, while the others ensure that the happening is witnessed. Yet this specification sees to the fulfillment of the other requirements.[16]

4. The event or statement must be reported by a large number people sufficient enough to render it impossible for them to have collaborated to lie.

Ghazâlî discusses at relatively great length the concept of *'adad* (the number constituting *tawâtur*). But since there is neither *Sharî'a* nor rational proof specifying what the minimum number required for *tawâtur* is, Ghazâlî concludes that the number cannot be calculated; for it is impossible to perceive the exact moment wherein sure knowledge accrues while counting the number of reports heard. Thus he classifies the number of reporters by the nonrational measures of *'kâmil'* (sufficient) , thus imparting certain knowledge, *'nâqiṣ'* (insufficient) , which does not yield certain knowledge, or *'zâ'id 'alâ al-kâmil'* (super-sufficient). The criterion for sufficiency, therefore, is attainment of necessary knowledge in the minds of those receiving the reports.

Moreover, he holds this to be an irreversible process. In other words, one cannot begin with the anticipated necessary knowledge and use a *tawâtur* number of reporters to measure it. Rather, the sufficiency of the number is determined by the effect of the reports on the minds of the recipients. This is why Ghazâlî, contrary to al-Bâqillânî, includes circumstantial evidence as a

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[16]Bernard Weiss calls this the 'super-condition' for this reason. Bernard Weiss, "Knowledge of the Past: The Theory of *Tawâtur* according to Ghazâlî," *Studia Islamica* 61 (1985): 90.

supporting factor to the reports which fall short of yielding certain knowledge.

To illustrate this, Ghazâlî gives the example of a report related by a number of people, short of *tawâtur*, concerning the death of a person. The reports alone do not impart certain knowledge. But if circumstantial evidence is taken into account with the reports, certainty can be reached. For instance, if the deceased person's father, known to be a distinguished, senior member of the community, is seen coming out of his house, bareheaded and bare foot, in torn clothes, confused, all the while slapping himself in the face, certain knowledge may accrue. For these bits of circumstantial evidence supplement the insufficiency of the number of reporters. Ghazâlî contends that experience is an evident indication of this.

Ghazâlî extends his view regarding the impact of circumstantial evidence on knowledge saying that certain knowledge may accrue by the report of even a single person if sufficient circumstantial evidence is available.[17] He poses the example of the Messenger, as well as the other prophets. Each is just one person; but supported with miracles and other demonstrative evidences from Allâh, this is sufficient enough to impart necessary knowledge of their truthfulness and reports.

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[17]Ghazâlî, however, ridicules the opinions of al-Ka'bî, a Mu'tazilite, who held that it is possible for the report of one person without circumstantial evidence to yield certain knowledge.

Evidences accompanying reports, then, do not only compensate for the insufficiency of the number of reporters, but also show how a report evolves from being suspect to being plausible to yielding necessary knowledge, just as the light of dawn gradually intensifies until its brilliance makes one certain of daylight.

Ghazâlî assails those *faqîhs*, *muhadditlıs*, and *usulî's* who specify a minimum number necessary for *tawâtur* based on incidental *Sharî'a* texts. Some hold the number to be forty, based on the required number of worshippers for the Friday prayer. Others claim seventy, based on the size of the group that Mûsa selected to meet God with him in order for them to convey what was to be revealed. Still others put the number at three-hundred and ten, based on the number of Companions who fought in the Battle of Badr.

Ghazâlî also rejects claims that the number for *tawâtur* must reach an 'uncountable' number or one that cannot be contained in a city. He states that this is false by the nature of the case, for the Companions used to reside in Medina and their number was confined. Yet their reports are certainly *mutawâtir*.

In addition, he argues against those who hold that the reporters of *tawâtur must not* be blood relatives or of the same country, and *must be* pious believers. Even the unrighteous, such as the Kharajites and the Murji'ites, says Ghazâlî, may be included in the number of *tawâtur*. In fact, their agreement with the reporters of *tawâtur* adds strength to the reports because they would not agree unless it is true. He continues that one accepts

mutawâtir reports even from non-Muslims, provided that they meet the stated requirements for *tawâtur*.[18]

Nor did the claim of the Shî'ites that the infallible *imâm* must be included among the transmitters of any report escape Ghazâlî's refutation. He argues that this position leads to an array of absurdities. For example, the infallible *imâm's* instruction, based on their stipulation, would not oblige anyone other than those who directly heard it from him. For his followers' statements cannot be qualified as *mutawâtir* and therefore cannot be binding because he is not included among them and none of the reporters are infallible. Moreover, the death of a person or the occurrence of a great event cannot be qualified as a *mutawâtir* report—regardless of the abundance of reporters—for the infallible *imâm* is neither present nor has he witnessed it. In Ghazâlî's words, this is hallucination.

Ghazâlî holds that the Prophet has been charged with the obligation to convey and promulgate the religion. He passed this charge to the *ummah*, who conveyed and promulgated the *Sharî'a* Texts and their fundamental rules. Ghazâlî contends, however, that while this has been fulfilled through *tawâtur*, its detailed elaboration was in varying instances left to solitary reports, which he argues cannot be viewed as impossible or faulty with reference to validating the transmission of the *Sharî'a*. He classifies these areas of promulgation into four categories: The Qur'ân; the five

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[18]Ghazâlî wants to guard here against the alleged *tawâtur* among Christians and others, when, for example, they reported that Jesus was crucified. Ghazâlî, al-*Mustaṣfâ*, 1:134.

pillars of Islam; the principles of nonessential transactions; and the details of the latter principle.

It is known, he says, that there was great concern to promulgate the Qur'ân widely, making it the foremost of *mutawâtir* texts.

Regarding the well-known five pillars of Islam, these too were widely conveyed by the Prophet, as Ghazâlî puts it, to the elite and common people alike. Hence, they are also *mutawâtir*.

The principles of nonessential transactions are those which common people need not necessarily master, such as sales, marriage, divorce, manumission and freedom regarding slaves in general, and possession of properties. However, scholars have learned of them through *tawâtur* and through reports given before large crowds who did not object to the information passed. Thus, those who do not know are obliged to accept the knowledge of the scholars, who do.

Finally, there are the details of these principles of the *Sharî'a*, of which some have been promulgated via *tawâtur* while others have come down through solitary reports. Specifically, this is knowledge of practices that, for example, void worship or nullify contracts or ablution, or are concerned with the division of inheritance shares, requirements for testimonies, etc. But Ghazâlî points out that even those details transmitted by valid solitary reports cannot be rejected. Furthermore, they may be relied upon with reference to the rules of common necessities.

In any case, Ghazâlî is firm in his stand that the promulgation of religious obligation has been fulfilled by both the Prophet and

the preceding generations to emphasize that the community is obliged to uphold the *Sharî'a* on the bases of both *mutawâtir* and valid solitary reports.

Ahâd (Solitary) Reports

The controversy concerning the validity of solitary reports began long before al-Shâfi'î's time; nevertheless, he was the first to record a developed, systematic defense with reference to validating *Sharî'a* rules by their transmission. Numerous *muhaddiths* and *usûlîs* have adopted his view. Al-Shâfi'î's impact upon Ghazâlî is clear in his discussion and illustration of this issue.[19] Yet Ghazâlî distinguishes himself by not concealing the extreme differences of opinion among the *muhaddiths.* Among them are a sizable number of Zâhirites[20] who not only accept solitary reports but hold that it is necessary to honor them and act on their bases. However, others among them, along with the Mu'tazilites, claim that it is rationally impossible for *Sharî'a* obligations to be laid by a solitary report which has been transmitted by an individual or individuals in such a way that the loci of obligation have no way of verifying the authenticity of the reports and the fact that the Messenger has commanded believers through them.

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[19]Compare Ghazâlî's *al-Mustasfâ,* (1:148-149), with Muhammad Idrîs al-Shâfi'î's *Risâla,* ed. Ahmad M. Shâkir (Cairo: Dâr al-Turâth, 1979), pp. 401-419.

[20]B. Hazm discusses solitary reports at great length in *al-Ihkâm,* 1:119-130.

Ghazâlî, however, takes a middle position between these two groups, stating that solitary reports are valid in establishing the *Sharî'a* rules and that man is required to act upon them, provided they are authentic and meet the required conditions for both the reporters and the reports. He bases his opinion on the consensus of the Companions to accept and act upon solitary reports, and also on the numerous *mutawâtir* reports citing the practice of the Prophet in accepting solitary reports.

For instance, on the question of the Magians, says Ghazâlî, 'Umar once said, "I do not know what to do regarding them, and I beseech anyone who heard something regarding them to report it to us." Then 'Abd al-Rahmân b. 'Awf said, "I bear witness that I heard the Messenger of Allâh, peace and blessings be upon him, say 'Treat the Magians as you treat the People of the Book.' " 'Umar then collected *jizya* from them and recognized the status of their religion.

Also, he cites an example involving 'Uthmân, when he decided on the case concerning the housing of a widow based on the report of Farâ'a b. Mâlik, after he sent a message to her and asked her about this.

He notes as well the famous instance of the people of Qubâ'[21] changing their *qibla* in mid-prayer based on a solitary report. One person came to them from the Prophet and informed them that the

[21]According to Shihâb al-Dîn Yâqût al-Hamawî, *Kitâb Mu'jam al-Buldân*, 5 vols. (Beirut: Dâr al-Sadir and Dâr Beirut, 1957), 4:301-303, Qubâ was originally the name of a well near Medina, which later became the name of a nearby village.

qibla had been changed from Jerusalem. So on the basis of his report they turned toward the Ka'ba.

However, Ghazâlî's opponents dismissed his illustrations and challenged his claim that the Prophet honored solitary reports and that the Companions by consensus accepted them. They support their repudiation by noting the Prophet's reluctance to accept the report of Dhû al-Yadayn, who, after performing noon prayer behind the Prophet, informed him that he had prayed two instead of four *rak'as*. Rather, the Prophet sought confirmation from Abû Bakr, 'Umar, and other participants. As for claiming consensus among the Companions, they give example of many who rejected solitary reports, such as 'Umar, for instance, who insisted that Abû Mûsâ al-Ash'arî retrieve a supporting source for the *ḥadîth* the latter quoted to 'Umar—"Any among you who seeks permission three times and hears no answer should leave"—in defense of his leaving the Caliph's door after receiving no response to his three requests to enter. Also, 'A'isha repudiated 'Abd Allâh b. 'Umar's narration of the tradition that a dead person is punished for the wailing of family members after his death.[22]

Ghazâlî responds that objections based on these examples are isolated cases which do not void the principle of relying on solitary reports, such as has come down to us through many reports as the practice of both the Messenger and his Companions. He suggests that a *mujtahid* who rejects one or another abrogated verse is no more disregarding the Qur'ân as a *Sharî'a* source than the isolated

[22]Ghazâlî, *al-Mustaṣfâ*, 1:153.

instances above nullify the principle of accepting solitary reports. Rather, the *mujtahid* is merely not accepting one verse which is abrogated. Ghazâlî discusses at length the example of Dhû al-Yadayn's report, arguing that the Prophet's rejection of it was likely instructive in order to set the precedent that reports originating before a large number of people should be related by more than one person.[23] Again, 'Umar's hesitation to accept Abû Mûsâ al-Ash'arî's report had an illustrative motive as well. He was particularly cautious so as to discourage people from abusing the attribution of reports to the Prophet. In any case, 'Umar did not require *tawâtur* and was satisfied with a second Companion verifying the report.[24] Finally, 'A'isha's objection to 'Abd Allâh b. 'Umar's *hadîth* concerning wailing over the dead was not a rejection of a solitary report; rather, in her view it contradicted Qur'ân, which is *mutawâtir* .

REQUIREMENTS FOR TRANSMITTERS

Essentially, Ghazâlî requires the transmitters of *hadîth* to be mature, trustworthy Muslims. He, of course, elaborates on these attributes of eligible reporters at some length in *al-Mustasfâ*.[25]

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[23]Ghazâlî, *al-Mustasfâ*, 1:153.

[24]Ghazâlî, *al-Mustasfâ*, 1:154.

[25]For the sake of comparison, it may be useful to see the *muhaddiths'* qualifications for a transmitter. See Muhammad Abû Shahbah, *al-Wasît fî 'Ulûm wa Mustalah al-Hadîth*.

Perhaps the foremost requirement that Ghazâlî stipulates for those transmitting the *Sharî'a* reports obliging Muslims to act or refrain from acting is that the reporter him or herself must be Muslim. A non-Muslim is suspect, according to Ghazâlî, and cannot be trusted to transmit *Sharî'a* reports, for he may interject some of his false beliefs or fabricate reports and attribute them to the Prophet so as to lead Muslims astray. He goes on to say that even a *fâsiq's* (unrighteous person's) testimony and report is not accepted in general. They are rejected, for their acceptance is a way of honoring him, where his statements become in a sense binding upon Muslims. This being the case, unbelief is graver and severer than *fisq* (unrighteousness). Thus, it is not befitting in the "administration of affairs," according to Ghazâlî, to recognize as a binding expression in religion the report of a person who does not believe in that faith's honor.[26]

A reporter's being Muslim is not in itself sufficient; rather a transmitter of *hadîth*, which ultimately renders responsible the loci of obligation, must also have reached the age of *taklîf*, i.e., puberty, for trust cannot accrue through the statements of minors. Ghazâlî says in support of this that a child has an inadequate fear of God which may not prevent him from lying. However, he says, it is legitimate for a minor who has heard reports and traditions in the age of discernment to relate them after reaching maturity. Ghazâlî points out that this was the practice among the Companions, for they accepted the reports of several others—like 'Abd Allâh b.

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[26]Ghazâlî, *al-Mustasfâ*, 1:156-7.

'Abbâs, 'Abd Allâh b. Zubayr, and Nu'mân b. Bashîr—who were quite young during the lifetime of the Prophet. They did not distinguish between hearing *ḫadîth* before or after puberty. Thus only conveyance is stipulated by legal age for the transmission of *ḫadîth*.

However, Ghazâlî contends that the testimony or report of minors against one another may be considered equal to circumstantial evidence, provided it takes place immediately after the disputed event and before they disperse so that none might influence their statements.[27]

A narrator of *ḫadîth* must also be known for his integrity and high standard of character. Hence, if a reporter is unacknowledged or unknown, his *Sharî'a* reports cannot be accepted. Ghazâlî takes issue with the Ḫanafites who consider it sufficient with reference to trustworthiness (*'adâla*) to declare one's Islam and not be associated with unrighteousness. He notes the bases of their position that, first, such was the practice of the Messenger, who accepted the report of a bedouin he did not know concerning the sighting of *Ramaḏân's* crescent. Second, the Companions accepted the statements of bedouins and women whom they did not require to be well-known nor recognized as trustworthy. Third, such is the common practice of Muslims in general in every generation, accepting even the testimony of a non-Muslim immediately after conversion to Islam without investigating the individual's trustworthiness. In addition, one accepts the reports of merchants

[27]Ghazâlî, *al-Mustaṣfâ*, 1:156.

or butchers when they report on the lawfulness of meat and other commodities, so long as they are not known to be unrighteous.

Ghazâlî rejects these arguments explaining that the issue is the transmission of the Prophet's *ḥadîth* in order that the loci of obligation will abide by them. Accordingly, it is essential to know the trustworthiness of the reporter. He adds that if one inquires into the practice of the Messenger himself, it is found that he selected as envoys and ambassadors to convey his message those who were known for their trustworthiness and integrity.

He further asserts that the Ḥanafites' claim that the Prophet accepted the report of an unacknowledged bedouin is wrong, for he may have known of his trustworthiness through revelation or perhaps the Companions who knew the bedouin endorsed his integrity. Nor did the Companions accept the reports of everyone, says Ghazâlî. They accepted only the reports of women known to them, such as the Prophet's wives; or they accepted the reports of the members of known tribes. Otherwise, they rejected unacknowledged reporters. He supports his position with the case of 'Umar, who rejected the report of Fâṭima b. Qays, and the action of 'Alî in rejecting the report of al-Ashja'î.[28]

Regarding the status of a convert, Ghazâlî maintains that his *Sharî'a* report or testimony before the court must not be honored before a sufficient period passes, whereupon his trustworthiness is

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[28]Ghazâlî, *al-Mustaṣfâ*, 1:154.

established and people come to feel secure that he his indeed a truthful person.[29]

Besides these qualifications, Ghazâlî insists that a reporter necessarily have the capacity to comprehend and retain what he hears from the Prophet or other transmitters so that he is able to convey it precisely. The credibility of a reporter, he contends, is voided if he is known to be of weak mind, heedless, forgetful, or earns notoriety as an unsound transmitter. Simply put, a transmitter must be able to comprehend, retain, and convey reports accurately.[30]

Finally, upon fulfillment of these conditions, Ghazâlî accepts and holds as acceptable the transmission of *Sharî'a* reports through a single reporter, as long as the reporter is an adult Muslim who is known to be trustworthy in reporting, precise in recording, and accurate in retaining. He opposes those of the Mu'tazilites, like al-Jubbâ'î, who disregard *Sharî'a* reports transmitted through one channel and require for valid laying of obligation that a *ḥadîth* be reported from the Prophet by at least two Companions who each relate it to two Successors who in turn relate it to two of their successors and so on.

Aside from al-Jubbâ'î, others require four witnesses to have heard the Prophet for the transmission of reports. The basis for this is the normal *Sharî'a* prescription of two male witnesses for

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[29]Ghazâlî, *al-Mustaṣfâ*, 1:159.

[30]Ghazâlî, *al-Mustaṣfâ*, 1:156.

testimony, or one male and two females, but four witnesses in the case of fornication. Ghazâlî, however, replies that originally a report of one transmitter is sufficient, regardless of the *Sharî'a* report; one qualified transmitter is enough to oblige the believers. Yet the *Sharî'a* has simply stated all the exceptions to this general rule. Thus, drawing analogy from the exceptions is not permissible.[31]

TERMINOLOGY OF TRANSMISSION

Ghazâlî's view of Sunna as a valid *Sharî'a* source obliging the loci of obligation 'to do' or 'not to do' led him, like the *muhaddithûn* before him, to survey the phraseology by which the Companions narrated the reports they heard directly or indirectly from the Messenger. What follows is a concise account of this terminology of the Companions in the order of reliability in which Ghazâlî introduced them.

The best and the strongest of these terms is when a Companion says, "*Haddathanî* . . . ," "The [Messenger of Allâh] 'related' to me"; or "*Akhbaranî* . . . ," The [Messenger of Allâh] 'informed' me"; or "*Sami'tu* . . . ," "I 'heard' the [Messenger of Allâh saying]" such and such.[32]

Next is when the Companion says, "*Qâla* . . . ," "The [Messenger of Allâh] 'stated' "; or "*Akhbara* . . . ," "The [Messenger of Allâh] 'informed' "; or "*Haddatha* . . . ," "The [Messenger of Allâh] 'related.'

[31]Ghazâlî, *al-Mustasfâ*, 1:155.

[32]Ghazâlî, *al-Mustasfâ*, 1:129.

" This implies, in Ghazâlî's view, that the Companion evidently heard it from the Prophet. However, he does not rule out the possibility that the Companion heard it from a peer.[33]

Third, the expressions, "*Amara Rasûl Allâh,*" "The Messenger of Allah 'commanded,' " such and such, and "*Nahâ Rasûl Allâh,*" "The Messenger of Allâh has 'forbidden,' such and such," are liable to various interpretations, according to Ghazâlî: (a) The Companion may not have personally heard it; (b) he may suppose as a command or prohibition what is not; (c) the imperative mood may suggest the entire community, a special segment, or a particular person. Yet Ghazâlî does not consider these possibilities as pertinent justification for rejecting this transmission, unless there are other bits of circumstantial evidence that prove one possibility correct. But being rationally possible alone is insufficient to reject a report of this kind.

The fourth level is when a Companion says, "*Umirnâ bi . . . ,*" "We have been 'ordered' to do" such and such, or "*Nuhînâ 'an . . . ,*" "We have been 'prohibited' from" such and such.[34] In addition to the preceding possible interpretations, here the source of command may be other than the Prophet himself, perhaps one of the Caliphs or governors. Ghazâlî argues, however, that when a Companion says that something is lawful or unlawful, it is expected that he

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[33]Ghazâlî, *al-Mustasfâ,* 1:129.

[34]Ghazâlî, *al-Mustasfâ,* 1:131.

realizes that he is relating or establishing a *Sharî'a* source—and they were known to be cautious in this regard.

Finally, when a Companion says, "We used to do such and such a thing in the time of the Messenger," it implies that this practice of the Companions was, in fact, approved by the Prophet.

REPORTS FROM THE UNTRUSTWORTHY

Political dispute in the early Islamic period resulted in the emergence of sectarian parties, like the Kharajites and the Shi'ites. Even within the primary body of Muslims there were trends in practice and in thought, like those of the Mu'tazilites and the Ash'arites, the Sûfîs and the philosophers, and others. Among these were individuals who participated in the fabrication and transmission of false *hadîth*. The *muhaddiths*, and after them the *usûlîs*, had the arduous task of setting criteria for *hadîth* criticism, and ultimately for acceptance and rejection—particularly with regard to individuals affiliated with one or another faction. Thus emerged specialized terms like *fâsiq* (unrighteous individual), *sâhib al-bid'â* (adherent to heretical innovation), *ahl al-bid'â* (the heretics) as descriptions of those known for party affiliation.

Reaction to such reporters varied with the *usûlîs*. According to Ghazâlî, the dispute is reduced to personal view regarding the effect of attributing, say, *fisq* or *bid'â* to a transmitter's report or testimony. Some, like al-Qâdî al-Bâqillânî, hold that *fisq* voids a person's transmitting capacity (*ahliyya*) altogether, rendering him ineligible to report or testify on religious matters. Consequently, he

rejected entirely their reports and testimonies.[35] The Hanafites hold that *fisq* is only an indication that a transmitter is suspected of collusion. But if there is circumstantial evidence establishing his truthfulness, his reports may be accepted.[36] Indeed, Ghazâlî, like al-Shâfi'î, is also of this opinion—which explains the latter's position regarding a number of Shî'ite groups and their testimonies, such as the Khaṯṯâbîya. For he claims circumstantial evidence to conclude that they used to lie in support of their party members.[37]

CONDITIONS FOR A TRANSMITTED TEXT

Ghazâlî lays six conditions upon the texts of *ḫadîths* themselves with regard to their transmission:

First, the tradition, "May Allâh make prosperous he who heard my speech, retained it, and then delivered it as he has heard it . . ." [38] implies this instruction to transmitters, especially of solitary reports: Convey the Prophet's statements in their entirety so that essential parts that effect the meaning and execution of the instruction of the *ḫadîth* are not omitted and so neglected.[39] For example, the *ḫadîth* said to have been related by 'Ubâdah b. al-

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[35]Ghazâlî, *al-Mustaṣfâ*, 1:160.

[36]Ghazâlî, *al-Mustaṣfâ*, 1:160.

[37]Ghazâlî, *al-Mustaṣfâ*, 1:160.

[38]Ghazâlî, *al-Mustaṣfâ*, 1:169.

[39]Ghazâlî, *al-Mustaṣfâ*, 1:168.

Ṣâmit, who ". . . heard the Messenger of Allah forbidding the sale of gold for gold, silver for silver . . . ," cannot be related but in its entirety, which includes, ". . . except with an equal part for an equal part and from hand to hand," meaning that things should be exchanged measure for measure and at the same time.

Second, a transmission of a solitary report must not come in contradiction of stronger reports; that is, sounder transmitted texts, like the Qur'ân or the *mutawâtir ḥadîth*. Ghazâlî again notes the case of 'A'isha upon her hearing 'Abd Allâh b.'Umar's report regarding the forbidding of wailing for the dead. He relies on her reply in addressing those who heard his report as, "By Allâh! you transmit to me from an irreproachable source. Yet hearing may be mistaken. Qur'ân is sufficient for you."[40]

The transmission of a *ḥadîth's* meaning is forbidden for a person who is ignorant of its style, implications, and interpretation. Ghazâlî, commenting on transmission via paraphrase, cites a dispute concerning a scholar who has high comprehension of Arabic and understands its meanings, agreeing with his *imâm*, al-Shâfi'î, and numerous *faqîhs* that this is permissible. He supports this with both the Messenger's practice of sending ambassadors to convey his messages and the entire community's customary practice of preaching Islam to non-Arabs by way of translation, which can be done only by meaning. Thus, says Ghazâlî, it should be permissible

[40]She refers to the verse of the Qur'ân, 53:38. For a detailed discussion of the report, see Ṣalâḥ al-Dîn Idlibî, *Manhaj Naqd al-Matn 'ind 'Ulamâ' al-Ḥadîth* (Beirut: Dâr al-Afâq al-Jadîda, 1983), pp. 113-116.

to transmit the language and the meaning of a *hadîth* by those eligible and able.

Fourth, Ghazâlî requires that the transmission of *hadîth* be connected from the Prophet through each generation's transmitters, adhering to al-Shâfi'î's insistence on the continuity of *isnâd,* to the degree that the latter refused to rely on *mursal* (disconnected) reports. Ghazâlî, however, makes an exception regarding *hadîths* that have been reported by either a Companion or a senior Successor, without explicitly stating that the Companion heard it directly from the Messenger or that the Successor mention by name the Companion who heard it from the Messenger. So long as there are indications by way of their statements or their acknowledged practice that they, respectively, have heard it from the Messenger or a Companion who heard it from the Messenger, this kind of report is reliable.[41]

Fifth, Ghazâlî stipulates that for a canonical report to be reliable it must not be contradicted by the practice of the reporter. He illustrates this by a case where 'A'isha had reported the *hadîth,* "Any girl who marries without permission of her guardian, her marriage is invalid."[42] But she approved the marriage of her niece,

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[41]Ghazâlî, *al-Mustasfâ,* 1:171.

[42]The Hanafites do not require a woman to seek the permission of her guardian for marriage. For more details, see Jamâl al-Dîn Abî Muhammd 'Abd Allâh b. Yûsuf al-Hanafî Zayla'î, *Nasb al-Râyyah li Ahadîth al-Hidâya,* 4 vols. 2d ed. (n.p.: Maktabat al-Islamiyya, 1973), 3:188; Ibn al-Humâm, *Sharh Fath al-Qadîr* (Beirut: Dâr Sâdir, n.d.), 2:394; and Zahîlî, *al-Fiqh al-Islâmî,* 7:191-192.

Hafsa bint 'Abd-al-Rahmân to al-Mundhir b. al-Zubayr in her brother's absence. Upon his return her brother 'Abd al-Rahmân became angry but later reconciled and approved of 'A'isha's action.[43]

Sixth, a solitary report may not transmit something that by its nature would compel many to promulgate it, such as the assassination of a governor in the market place before a great number of people; or a noticeable earthquake; or a strange happening preventing a community from praying the Friday prayer. He bases his opinion on the general, ordinary practice of people to transmit similar reports.

Furthermore, he does not allow for single transmitters to relate reports concerning general necessities facing the community, except on the condition that a transmitter reports something which is customarily possible to believe. He takes issue with the Hanafite scholars, such as al-Karkhî, who approve of solitary reports in this context.[44]

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[43]Interestingly, Ghazâlî in his *fiqhî* treatment contradicted this position and stated that a woman cannot marry without the permission of her guardian, in contradistinction to Abû Hanîfa. See the abridgement of Ghazâlî's *al-Wasît* by Al-Qâdî Baydâwî, 2:728, *al-Ghayya al-Quswâ*. This abridgement, however, has some modifications.

[44]Ghazâlî, *al-Mustasfâ*, 1:171.

TRANSMISSION REQUIREMENTS FOR WRITTEN MATERIALS

Before writing was popularized by the availability of paper, verbal reporting was the principal means of transmitting traditions. But by Ghazâlî's time, writing became equally, if not more, fundamental in transmitting reports and *hadîth* collections. Consequently, new discussion arose with reference to the validity of transmission in the new forms spawned by writing. Ghazâlî lists these forms in a hierarchy of five categories according to their soundness.

The strongest form is when a *muhaddith* reads to the transmitter with the intention that he shall transmit the *hadîth* from him. This empowers the transmitter to say, "*Haddathanî*," "He related to me"; "*Akhbaranî*," "He informed me"; "*Sami'tu fulânan yaqûl* . . . ," "I heard so and so say . . ."[45]

Second, the transmitter reads before his *shaykh* (source *muhaddith*) while the *shaykh* remains silent in approval.[46] He may state, says Ghazâlî, only, "*Haddathanî fulânun qirâ'atan 'alayhi*," "So and so has related to me by way of reading before him." Under no circumstances is this transmitter allowed to say "*Haddathanî*," "He has told me," without qualifying it by explaining the way he has taken the report, namely by reading before him.

The third form is the *muhaddith's* recognition of his student's trustworthiness in conveying *hadîth*, saying, "*Ajaztu laka riwâyat*

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[45]Ghazâlî, *al-Mustasfâ*, 1:165.

[46]Ghazâlî disagrees with some of the Zâhirites who reject this form of transmission. *Al-Mustasfâ*, 1:165.

ma sami'tuhu min al-akhbâr," "I have permitted you to transmit what I have heard from [the corpus of] *hadîth*." In this case, the transmitter is forbidden from saying "*Akhbaranî*," "He has 'told' me." Rather, he must say that he has told me by way of permission (*ijâza*).

Fourth, Ghazâlî repudiates the *muhaddiths'* method of *munâwala* transmission; that is, the handing over of a manuscript of *hadîth* by the *shaykh* to the reporter in order to transmit the materials therein. He holds that handing over a manuscript of *hadîth* is a formality with no obvious benefit or consequence.

Fifth, Ghazâlî disallows the transmission of *hadîth* from a written copy attributed to a *muhaddith* through recognition of his handwriting. For the concept of transmission, according to him, is relaying what a reporter has heard.

Finally, Ghazâlî contends that in the event that a *shaykh* conveys a tradition to a trustworthy transmitter, but later forgets that he has done so, it is permissible to act on its basis, provided that the *shaykh* does not openly deny the *hadîth*. If, however, denial occurs, one should suspend judgement on accepting it.[47]

TESTIMONY VERSUS TRANSMISSION

There is a strong similarity between the kind of testimony that a court rules upon and the transmission of a *hadîth* which lays obligation upon believers. Thus, many *usûlîs* ground the requirements of transmission in the discussion of testimony

[47]Ghazâlî, *al-Mustasfâ*, 1:167.

(*shahâda*). Their mutual stipulations for their respective relators are belief, maturity, trustworthiness, and accuracy, whether of a report or an event.

However, the conditions binding upon witnesses and not reporters include freedom, masculinity, and sight. Also, a specific number of witnesses may be required and the question of animosity or incrimination has relevance. For example, the transmission of a *ḥadîth* is valid from (a) a father on the authority of his son, or a son on the authority of his father, (b) a blind person who has adequate hearing and comprehension, and (c) a trustworthy woman. But their testimony may well be rejected by a judge.[48]

There is general agreement that when something confirms the invalidation of the credibility or the trustworthiness of a reporter or witness, their reports or testimonies are rejected. Dispute, however, occurs with reference to the form of impugnment and whether deeming one no longer credible is sufficient for rejection or whether details of the cause must be cited.

Abû Bakr al-Bâqillânî holds that stating the cause for discrediting is not necessary. For the specialists, who know the status of the transmitters, do not need this, and non-specialists will not benefit from it. Others require the specification of the cause for *jarḥ* (impugnment) only, not *ta'dîl* (attestation).

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[48]Ghazâlî, *al-Mustaṣfâ*, 1:155.

Ghazâlî reduces the issue to the status of the endorser (*muzakkî*) himself. If he is one of the *imâms* commonly recognized as authorities in this field, he need not detail the cause. But if he is an ordinary, trustworthy person whose expertise is not known, he must specify the reason for *jarh*, for he may mistake a non-discrediting quality as a discrediting one. If opinions on an individual's credibility differ, then Ghazâlî gives preference to *jarh*, regardless of the number who endorse the person.

The strongest form of attestation about a transmitter or an eyewitness, according to Ghazâlî, is the open statement of a specialist in the field that he is *thiqa* (trustworthy), *'âdil* (credible), or *ridâ* (satisfactory).

Next comes the narration of a *hadîth* by a known specialist on the authority of the transmitter under consideration, on the condition that the specialist knows from the person's circumstances that he has not reported the *hadîth*, save from trustworthy sources.

Finally, when a judge rules based on the testimony of an eyewitness, or a *muhaddith* known in the field of *al-jarh wa ta'dîl* acts based on a report of a transmitter, this is considered endorsement (*tazkiyya*) for the eyewitness and the reporter, respectively; however, it is not as strong as the openly stated endorsement.

CHAPTER IV

IJMĀ' (CONSENSUS) THE THIRD SHARI'A SOURCE

With the death of the Prophet, revelation ceased. But for the forming *ummah* it was ever necessary to confront issues not explicitly ruled on by the Qur'ân or the *Sunna*. The principle of *ijmâ'* in its broadest sense (and in a different way, *ijtihâd*)[1] gave Muslims a new source from which to formulate the many details arising in the spheres of law, politics, and theology, and in problems of peace and war. Yet it is ironic that *ijmâ'* itself and its application never received consensus.

Indeed, Ghazâlî's legal doctrine in *al-Mustasfâ*—despite its essential similarity to al-Shâfi'î's positions in the *Risâla*—gives vivid account of the juridical debate that *ijmâ'* sparked in the three centuries between them. Its demonstration and refutation, definition and constituents, enactors and occurrence, validity and rank all became points of contention for the *'ulamâ'*. This chapter discusses the concept of *ijmâ'* in the context of this dispute as Ghazâlî introduces it in *al-Mustasfâ*.

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[1]Fazlur Rahman in his treatment of the structure of Islamic law gives an insightful perspective on the principle of *ijmâ'*. *Islam*, pp. 72-79.

IJMĀ' IN LANGUAGE

Ijmâ' is an ambiguous term that is used as a synonym for (a) '*izmâ'*,' resolution and determination to execute, and (b) '*ittifâq*,' agreement. When a group of people agree on something it is said, "*Ajma'û*"; "They have consensus." Thus Ghazâlî contends that based on its linguistic signification it is acceptable to apply the term ' *ijmâ'* ' to the consensus of non-Muslims or that of Muslims in nonreligious affairs.

The general linguistic nuance *agreement* is also present in the technical definition of *ijmâ'*, where it is a particular 'agreement' of the community of Muhammad on a matter of religion.[2] But specifically who must reach agreement in order to effect *ijmâ'* is not as easy a matter to define. Even Ghazâlî's definition of *ijmâ'* in *al-Mankhûl*, where as a young scholar he summarized *al-Burhân* of his teacher, al-Juwâynî, differs from his definition in *al-Mustasfâ*, written at the pinnacle of intellectual maturity. The latter definition reflects his comprehensiveness, for he requires *ijmâ'* to rise from the consensus of the entire *ummah*, while the former asks for only the agreement of *ahl-al-halli wa al-'aqd* (the people of influence).[3] Moreover, while he grants that those enacting *ijmâ'* must meet specific requirements, he holds that the entire *ummah* is charged with the obligation to adhere not only to the *Sharî'a*

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[2]Ghazâlî, *al-Mustasfâ*, 1:173.

[3]Literally "the people of loosening and binding."

texts but to the decisive proofs resulting from *ijmâ'* as well, and thus are liable to punishment if they deviate from them.[4] Evidently, he infers this from his position that *ijmâ'* is the *ummah's* collective responsibility.

Yet the mere occurrence of *ijmâ'* does not in itself lend it legitimacy as a valid *Sharî'a* source. Ghazâlî himself grants that *ijmâ'* cannot be considered a valid proof on its own authority. For this reason he seeks to establish the authority of *ijmâ'* with both *Sharî'a* texts and rational proofs.

Although he cites verses of the Qur'ân in support of *ijmâ'*, he concedes that no text from the Book explicitly indicates its validity. There is apparent but not conclusive evidence. Rather, decisive proof, he contends, comes from select *ḫadîths*—none of which, however, has been transmitted through *tawâtur*—which characterize the *ummah* as 'error free' when in unanimous agreement. Nevertheless, together he holds these *ḫadîths* to yield sure knowledge, even as he claims that bits of circumstantial evidence along with non-*mutawâtir* reports may impart certain knowledge.

Ghazâlî's reliance on the Qurân and the *Sunna*, and the objections to his conclusions that he cites which also purport to be based on them, gives a feel for the legal tension surrounding this source in his time, a tension that even Ghazâlî's consummate skill could not ease. Yet dispute about *ijmâ'* continued to arise in

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[4]Ghazâlî, *al-Mustaṣfâ*, 1:153.

subsequent writings on *usûl.*[5] In any case, his summary of this dialogue in *al-Mustasfâ*—particularly the use, interpretation, and reinterpretation of these special texts from the Qur'ân and the *Sunna*—maps out succinctly the boundaries of the major legal views of the validity of *ijmâ'*.

THE VALIDITY OF *IJMĀ'*

The following verses of the Qur'ân are those that Ghazâlî lists as having been cited by scholars seeking to establish valid proof for *ijmâ'*:

- *Thus We have appointed you a middle community that you might be witnesses upon the people and that the Messenger might be witness upon you.*[6]
- *You are the best community ever brought forth for people, bidding good and forbidding evil and you believe in Allah.*[7]
- *Of those We created are a community who guide by the truth and by it act with justice.*[8]
- *And hold fast to Allah's bond, together, and do not scatter.*[9]

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[5]See Muhammad b. 'Alî Shawkânî's skepticism about *ijmâ'* in his book *Irshâd al-Fuhûl ilâ Tahqîq al-Haqq min 'Ilm al-Usûl* (Cairo: Mustafâ Halabî Press, 1356 H.), pp. 78-79.

[6]Qur'ân, 2:143.

[7]Qur'ân, 3:110.

[8]Qur'ân, 7:181.

[9]Qur'ân, 3:103.

- *And in whatsoever you differ, its judgment belongs to Allah.*[10]

- *If you dispute in anything, refer it to Allah and the Messenger.*[11]

- *And whosoever opposes the Messenger after guidance has become clear to him and takes a path other than the path of the believers, We shall turn him over to what he has turned to and We shall roast him in Gehenna—an evil homecoming!* [12-13]

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[10]Qur'ân, 42:10.

[11]Qur'ân, 4:59.

[12]Qur'ân, 4:115.

[13]Abû Bakr al-Jassâs (d. 370 H.) a Hanafite jurist adds the following verses in justifying *ijmâ':* 1. "Did you suppose you should be left in peace, and God knows not as yet those of you who have struggled, and taken not — apart from God and His Messenger and the believers — any intimate? God is aware of what you do" (Qur'ân, 9:16). 2. "And follow the way of he who turns to Me" (Qur'ân,31:15). According to al-Jassâs, the first verse gives the friendship of the Prophet and that of the believers an equal degree. Thus he infers that opposing the believers is as serious as opposing the Prophet, and departure from their way is equivalent to the rejection of truth. In the second verse, the Qur'ân asks, in the view of al-Jassâs, to follow a single person from the Muslim community who is devoted to God. But one cannot definitely know such a person. Thus he must be part of the entire Muslim community. Therefore, the agreement of the community includes the opinion of such a person ordered by God to be followed. The consensus of the believers is therefore a decision from God.

The weakness of al-Jassâs' argument is perhaps the reason why al-Ghazâlî did not cite this verse in his argument for the authority of *ijmâ'*. For further information on al-Jassâs' position see Ahmad Hassan, *The Doctrine of Ijmâ' in Islam: A Study of the*

This last passage is, in his opinion, the most indicative of *ijmâ'* of all the verses, for it obliges adherence to the collective path of the believers'. Still it does not expressly justify the validity of *ijmâ'*. Since the Prophet did not specifically explain other than what the verse indicates, one must accept it as is, and it reveals only that God threatens a person who opposes the Prophet rather than aiding, obeying, and defending him. But in order not to oppose the Prophet, one must adhere to "the believers' way"; namely supporting, protecting, and submitting to the Prophet by fulfilling his commands and abstaining from what he has prohibited.[14]

More so than he does on the Qur'ân's verses, Ghazâlî erects the authority of *ijmâ'* on the foundation of *Sunna*, the cornerstone of which is the Prophet's declaration that "my community will not agree on error, nor will it stray." This text is stronger and more explicit in indicating the authority and validity of *ijmâ'* than the 'adherence to the path of believers' verse. But he realizes that this *hadîth*, along with its like traditions, is not transmitted by way of *tawâtur*, as is the Qur'ân.

He argues that numerous traditions to this effect have been reported from the Prophet with different wordings; but all agree on the immunity of the community from error. Moreover, they are

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Juridical Principle of Consensus (Islamabad: Islamic Research Institute, 1978), p.41.

[14]Ghazâlî, *al-Mustasfâ*, 1:175

reported on the authority of the "notable and most reliable Companions," such as 'Umar, b. Mas'ûd, Abû Sa'îd al-Khudrî, Anas b. Mâlik, b. 'Umar, Abû al-Husayn, Hudhayfa b. al-Yamân, and others. In addition, these reports are accepted by both those who acknowledge the validity of *ijmâ'* and those who oppose it.[15]

The following are the statements attributed to the Prophet:

- My community shall not agree on a mistake.[16]
- My community will not be unanimous on error.
- Allah will not let my community come together on an error.
- I have asked Allah, the Exalted, that He not bring together the whole of my community on an error. And He granted it.
- Whosoever is pleased by making the wide space of Paradise his abode, he must keep to the community. For their supplication shields them from others.[17]
- Satan accompanies the loner. He is remoter from two.
- Allâh's hand is with the community, and Allâh gives no attention to the divergence from one who splits [from the community].

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[15]Ghazâlî, *al-Mustasfâ*, 1:176

[16]The *hadîth* is found in *Sunnan* b. Mâjah, 2:1303, no. 3950; the *Mustadrak* of al-Hâkim al-Naysabûrî, 1:115-116; and b. Hajar al-Haytami's *Majma' al-Zawâid*, 5:217-219.

[17]This translation is based on 'Izz al-Dîn Ibn Athîr, *al-Nahâya fî Gharîb al-Hadîth wa al-Athar*, 5 vols. ed. M. Tanâhî (Riyad: Maktaba Islâmî, n.d.), 1:461 and 2:122.

- One group shall always remain predominating over truth, unharmed by whosoever disagrees with them.

- The disagreement of whosoever differs with them shall not harm them, except for the hardship that confronts them.

- Whosoever secedes from the community or separates even the span of a hand, he has doffed the noose of Islam from his neck.

- Whosoever separates from the community and dies, his death is in ignorance.

But the Ẕâhirite b. Hazm (d. 456/1064) presented a challenge to Ghazâlî. He claimed that both the generations of the Companions and the Successors passed without record of them quoting these *hadîths* specifically as evidence for the validity of *ijmâ'*, which actually took place, in b. Hazm's view, later in the second century with the emergence of legal personal opinion (*ra'y*).[18]

Others besides b. Hazm have raised the issue of these *hadîths* not being *mutawâtir*, concluding that they impart only conjecture and not certain knowledge. Therefore, a decisive principle, such as *ijmâ'*, cannot be established based on conjecture.

Ghazâlî, apparently applying Aristotelian logic, refutes this in two ways:

First, he argues that *the sum* of the Prophet's statements exalting the position of the Muslim *ummah* and informing of its infallibility indeed impart necessary knowledge. Although individually the reports do not meet the requirements of *tawâtur*,

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[18]Ibn Hazm, *al-Ihkâm*, 4:185.

he likens them to one's necessary knowledge of 'Alî's bravery, H̲âtim's generosity, al-Shâfi'î's brilliance, and the eloquence of al-H̲ajjâj. We necessarily know them even though the individual reports about these matters are not *mutawâtir*. For one may object to an individual report, but not to the total body of reports to this effect. The same principle applies to the reports on *ijmâ'*. In composite they constitute *tawâtur* and therefore yield certain knowledge.

Secondly, even if one disclaims necessary knowledge based on these *h̲adîths*, it can be inferred in two ways: (a) It is known that these reports were widespread among the Companions and their successors, who relied on them to justify *ijmâ'* as a *Sharî'a* source, until the time of al-Naz̲z̲âm, whom Ghazâlî chastises as "meager of stature and dignity";[19] (b) it is impossible in the normal course of affairs for a living community generation after generation to concede something that is baseless in the face of great motive to reject it given the diversity of human dispositions and their disparate ambitions and points of view with respect to accepting something or rejecting it. Moreover, in view of the fact that those citing these reports did so to establish the validity of a decisive source—one which has interpretive, indeed, abrogative authority over the Book of Allah and the *mutawâtir Sunna*—it is by the nature of the case impossible for them to accept this without relying on sure reports. This in itself proves that the reports *in*

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[19]Ghazâlî, *al-Mustas̲fâ*, 1:177.

toto (1) impart certain knowledge and (2) have a common denominator that is *mutawâtir*—the community's infallibility.

Opposition to the Validity of Ijmâ'

Those who did not acknowledge the indications of these verses and prophetic traditions as legitimizing *ijmâ'* had three approaches in rejecting them: Repudiating Ghazâlî's arguments; interpreting the texts differently; and countering with other verses and traditions.

Ghazâlî quotes the repudiators as raising four objections:

First, they contend, it is likely that someone may have transmitted contrary traditions which have not reached us.

Second, they charge Ghazâlî with circular reasoning in his support of *ijmâ'*, claiming that essentially he bases his proof for *ijmâ'* on specific *ḥadîths* and then seeks to prove the authenticity of those *ḥadîths* by *ijmâ'*. They grant that the soundness of these reports have been agreed upon. But they do not concede that this agreement is necessarily correct, and hold this to be the real point of contention.

Third, they question Ghazâlî's assumption that these *ḥadîths* are certainly the bases upon which those who established *ijmâ'* relied. The proof for the validity of *ijmâ'* may have been established by reports that did not reach us. One is obligated only by that which has been transmitted through *tawâtur* and not by speculative transmission.

Fourth, they challenge Ghazâlî to explain why the Companions never saw fit to tell the Successors explicitly how the rectitude of these *ḥadîths* is established, leaving the *ḥadîths* in doubt. Since such explicit transmission is not the case, the validity of *ijmâ'* based on these *ḥadîths* cannot be forced.

Ghazâlî presents the common practice of the early generations with the force of discursive reasoning to answer these objections. In refuting the repudiators' first argument, namely the possibility of the existence of contrary untransmitted reports, he claims *'âda*, i.e., the very nature of the case makes it impossible for such *ḥadîths* to be 'lost' For any opposition or deviation from these texts would necessarily have been well known. Since such opposition has not been mentioned, it therefore did not exist. For if the relatively obscure report of dispute between the Companions regarding compensation for harming a fetus did not suffer neglect, it is rationally impossible that their dispute concerning a *Sharî'a* source would.[20]

In response to their second objection, he clarifies that citing reports in support of *ijmâ'* is different than applying *ijmâ'* in support of reports. For *ijmâ'* is used only to endorse the rectitude of reports. Moreover, he adds, it is impossible, again in the normal course of events, for succeeding generations to keep silent about an unsound report. Its acceptance is, then, evidence of the reports' rectitude. And if it is sound, it is a proof for, in this case, the validity of *ijmâ'*.

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[20]Ghazâlî, *al-Mustaṣfâ*, 1:176.

Ghazâlî dismisses their third contention as pure conjecture, saying that what in fact has been recorded is that the Companions relied on the reports he mentions to discourage disintegration of the community.

Ghazâlî replies to their final objection—that the Companions never explicitly informed the Successors of these reports' rectitude— purporting that the Companions' awareness of the infallibility of the *ummah* is not exclusively based on reports, but on a "totality of circumstantial evidences, other [*Sharî'a*] indications, and the reiteration of words and reasons" not explicitly expressed in the *ḥadîths*.[21] These evidences were sufficient for the Successors, who clearly understood that an uncertain report cannot be the basis for establishing a primary principle. Moreover, the Successors in particular, as well as those after them, naturally relied upon reports together with circumstantial evidence.[22]

After answering the repudiators, Ghazâlî summarizes the basic positions of the second group, who interpret the *ḥadîths* differently than he does and so reject their proof. They offer three alternative understandings of the *ḥadîth*, "My community shall not agree on error," focusing essentially on the words ' *ḍalâl*, ' (*error*) and '*ummah*' (*community*).

First, they say, *error* in this context means that the

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[21]Ghazâlî, *al-Mustaṣfâ*, 1:177.

[22]Ghazâlî, *al-Mustaṣfâ*, 1:176-177.

community is immune from infidelity and innovation based on contrived interpretation or doubt. As for other reports where the term *mistake* (' *khaṯa'* ') replaces error, it is not a *mutawâtir* transmission. And if it were correct, it too then signifies disbelief.

Second, they contend that while the *ḫadîth* may in fact mean infallibility from error, this does not necessarily imply *every* error. Rather, it may mean immunity from error concerning, say, the *ummah's* witnessing upon the other communities in the Hereafter. Or it may mean not conspiring to oppose *mutawâtir* texts or demonstrated rational proofs.

Third, the word *community* expresses the whole, which includes all those who believe in the Messenger from the time of his prophethood until the Day of Judgement. The community in this sense will not agree on error; however, one or more generations may do so.

Ghazâlî responds to these three interpretations in order.

First, *error* does not linguistically correspond to *disbelief*. It means *astray*. He quotes the Qur'ân as saying, "*Did He not find you* [O Muḫammad] 'astray' *and guide you?*"[23] And Moses said, "*Indeed I did it then, being one of those that* 'stray.' "[24]

Thus, the *ḫadîth* can only mean the protection of the entire *ummah* from what individual Muslims have not been protected from, that is committing mistake or negligence. For the whole

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[23]Qur'ân, 93:7.

[24]Qur'ân, 26:20.

ummah because of its virtuousness takes the place of the Messenger after his death. Therefore, it must be infallible with reference to religious affairs. As for the non-religious affairs of the world, infallibility is not necessarily attributed to it.[25]

Second, interpreting this *ḥadîth* to mean the infallibility from some errors—not all—strips the community of the distinction that infallibility carries. For avoiding some errors and not all is a property which Muslims and non-Muslims alike possess. It suggests no particular excellence for the Muslim community. And if error is possible with regard to some affairs, it is then logically possible with all affairs—which is impossible here; for God has obliged following the path of the community and has denounced those who oppose it.

Lastly, the use of the word *community* in this sense does not intend to include either minors or the insane—let alone the dead nor the as yet uncreated or unborn. For it is not possible to anticipate their meetings, contributions, and differences. What is meant by the *ḥadîth* is simply the consensus of those who are living in every generation and able to agree and disagree, whereas their consensus may be breached or opposed in this world. For according to their use of *community*, consensus and disagreement are conceivable only on the Day of Judgement.

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[25]Ghazâlî, *al-Mustaṣfâ*, 1:178.

The third group who oppose Ghazâlî's proof for the authority of *ijmâ'* counter argue based on verses and *hadîths* that forbid apostasy, disbelief, and involvement in falsehood:

- *"And that you say concerning Allâh what you do not know."*[26]
- *"Whosoever turns from among you from his religion and dies disbelieving . . . he will die an infidel."*[27]
- *"And consume not your goods from among yourselves in vanity."*[28]

They imply that these verses prove that everyone in the community is vulnerable to these forbidden acts, adding that there are many reports regarding the errant behavior of the community prior to the Last Hour. Therefore, it is possible for the community to err.

Ghazâlî, however, points out that nothing in these verses implies prohibiting the community from agreeing unanimously on error. Rather, they are aimed at prohibiting individuals from committing the mentioned violations. Furthermore, prohibiting error and disbelief does not necessarily mean error and disbelief must occur. The verses simply warn against the consequences of the said violations. He illustrates this with two verses directed to the Messenger, *"If you were to commit* shirk, *all your deeds would*

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[26]Qur'ân, 7:33.

[27]Qur'ân, 2:217.

[28]Qur'ân, 2:188.

come to naught"[29]; and "*Do not be of the ignorant ones . . . ,*"[30] arguing that they were revealed after the Messenger was granted immunity from disbelief—and it is inconceivable to imagine him committing *shirk.*

Even in the most dire situations conceivable where some of these prohibitions may be committed, Ghazali says only a minority may actually commit them. As for the other reports indicating the occurrence of numerous violations, they do not claim error on the part of the entire *ummah,* for there are *ḥadîths* emphasizing the existence of a group from among the community ever adhering to the truth.[31]

Finally, refutation, interpretation, and counter argument against these validating Texts were not the only opposition to *ijmâ'.* Indeed, al-Naẕẕâm redefined *ijmâ'* altogether to void its legal implications. He reduced it to "every statement whose proof is evident."[32] Ghazâlî rejects this interpretation as contrary to the norm of language. He states that al-Naẕẕâm adopted this interpretation as a pretext for his rejection of *ijmâ',* for he was aware of the prohibition against denying *ijmâ'.*

Regardless of whether Ghazâlî's assumption is correct, al-Naẕẕām focused on evidence rather than number, though they were

[29]Qur'ân, 39:65.

[30]Qur'ân, 6:35.

[31]Ghazâlî, *al-Mustaṣfâ,* 1:179.

[32]Ghazâlî, *al-Mustaṣfâ,* 1:173.

the entire *ummah*. In this he reflects the general Mu'tazilite attitude prevalent in the writings of al-Qâḏi 'Abd al-Jabbâr and his student Abû al-Ḫusayn al-Basrî.[33]

Establishing Ijmâ' on Rational Proof

Ghazâlî, like his mentor al-Juwâynî, defends the validity of *ijmâ'* on the basis of the practice of the Companions; that is, when they decided upon an issue, they did so only on the basis of the *Sharî'a*. This practice has been transmitted via *tawâtur*. Also, it is impossible, in the nature of the case, that any of them would be heedless of a decision that was not founded on the *Sharî'a*, or that they would remain silent if such a decision occurred. It is also inconceivable that they were capable of falling into error collectively or that they would conspire to lie, since their numbers exceed the number of *tawâtur*. Ghazâlî admits that there are weaknesses in this argument, for the *ijmâ'* of the Companions does not necessarily mean that it must be followed. And the obligatoriness of compliance, requires a proof other than *ijmâ'*.

He has recourse, however, to the verse of the Qur'ân concerning 'adhering to the way of the believers,' stating that whosoever opposes the consensus of the *ummah* is denounced; one must follow "the way of the believers."

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[33]*The Encyclopaedia of Islam*, new ed., s.v. "Idjmâ'," by M. Bernand.

One expects Ghazâlî, given the breadth of his knowledge and the diversity of his learning, to prove the validity of *ijmâ'* by rational argument, demonstrating that this principle is necessary to sustain the integration of the community and facilitate its *Sharî'a* aims. His contemporary al-Pazdawî in his proof for the authority of *ijmâ'* argues that a fallible *ummah* in one generation implies that following generations are deprived of knowing the complete *Sharî'a* as revealed—which contradicts both the *Sharî'a's* universality and eternity. Thus, *ijmâ'* is a necessary principle for maintaining the continuity of the *Sharî'a* itself.

Perhaps Ghazâlî did not argue convincingly for the rational necessity of *ijmâ'*, even though it is a primary source, because it never formally materialized as an institution for the *ummah* to enforce. This may explain why Ghazâlî confines himself to a search for legal precedents where *ijmâ'* was utilized by the *ummah* as a legitimate *Sharî'a* source—especially by the Companions and the Successors.

But he is not unique in this approach. This is the method of almost all who treated *ijmâ'* in *uṣûl* beginning with al-Shâfi'î and continuing through the classical period. For there was always controversy about what constitutes *ijmâ'*, its conditions, and legal status. In the literature, these issues can be broken down into several areas of question:

- Who are its enactors? If the entire *ummah*, then are the masses included?

- If it be only the learned specialists, may an *uṣûlî* or a *faqîh* not well versed in the details of the *Sharî'a* or *usûl,* respectively, participate? Are the theologian and the grammarian of no acquired skill in extracting *Sharî'a* rules considered among the enactors of *ijmâ'*?

- Can *ijmâ'* be constituted without a *mujtahid* who is known to be an heretical innovator but is not charged with infidelity?

- Is the consensus of other than the Companions valid? Is the consensus of other than the four rightly-guided Caliphs also valid?

- Is the agreement of the qualified enactors of *ijmâ'* irreversibly final? Does the agreement of the majority constitute *ijmâ,* despite the objection of the rest of the community?

- Is *ijmâ'* limited to the community of Medina, Mecca, Baṣra, or Kûfa, or the communities of Mecca and Medina together or Kûfa and Baṣra?

- Are those who constitute *ijmâ'* required to reach the number of *tawâtur*?

In addressing these issues, Ghazâlî holds that *ijmâ'* is, by definition, the consensus of the entire *ummah* on religious matters. However, he was not without disputants. Ṣayf al-Dîn al-Āmidî later criticized this position and refuted Ghazâlî's definition on several grounds.

To begin with, he contends that the term *'ummah'* is ambiguous and may include all Muslims until the Day of Judgement, rendering consensus in any practicable sense impossible. But if for the sake of argument *ijmâ'* could be reached by a generation and if there were no people of influence, then, Āmidî says, Ghazâlî's definition implies that the consensus of the

simple masses would be valid. Moreover, Ghazâlî's stipulation that the agreement should be in regard to religious matters excludes the consensus of the *ummah* on, for instance, rational issues.

However, upon closer examination of Ghazâlî's notion of *ijmâ'*, Amidî's objections appear baseless, for Ghazâlî, in his definition takes care to qualify the term '*ummah,*' stating explicitly that it is divided into three categories: (a) Those whose presence is decisive for constituting *ijmâ'*, namely *ahl-al-ḫall wa al 'aqd* (the people of influence, the *mujtahids* for instance); (b) those excluded necessarily because of rational deficiency, such as minors, the insane, and those in womb; (c) those who fall between these two groups, that is, the masses and nonspecialists

Ghazâlî continues to say that what issues from the *Sharî'a* is divided into that which is common knowledge—for both the common people and the people of influence, such as the obligatoriness of the five daily prayers, *zakât*, and *ḫajj*—and that which only specialists know, that is, the details of these obligations. However, the *ummah's* masses unanimously agree to follow the *mujtahids*, according to Ghazâlî. Therefore, they are the ultimate legitimating factor in the latters' *ijmâ'*.

Ghazâlî poses the example of an army that empowers a group to negotiate a peace treaty with an enemy force. If peace is reached, it is said, "The army has signed a peace treaty."[34] So it is with the unanimous agreement of the *mujtahids*. The community *en masse* assents, thus constituting *ijmâ'*.

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[34]Ghazâlî, *al-Mustaṣfâ*, 1:181.

Yet, he amends, the objection of the masses that are not based on *Sharî'a* proofs must not be taken into account on two grounds: That the common folk do not have the instrument of *ijtihâd* (*nuqsân al-âlah*), and so are categorized with minors and the insane; and that the Companions have unanimously agreed not to consider the dispute of the masses. Further, he argues, it is not conceivable on the part of the masses who are of sound reason and judgement to oppose any *ijmâ'* based on ignorance—especially since the Qur'ân commands them to refer to the people of knowledge, that is, the *mujtahids*.[35]

As for the second question, Ghazâlî does not agree with the position of those jurists who restrict the participants of *ijmâ'* to the founders of the major legal schools, namely al-Shâfi'î, Mâlik, Abû Hanîfa, and others, or their able and prominent followers. In addition, he defends the right of the scholars of *usûl* to be included in the community of *ijmâ'*, noting the Companions' practice of including in *ijmâ'* some who were not known to have mastered the details of *fiqh*, such as 'Abd al-Rahmân b. 'Awf, Abû 'Ubayda b. al-Jarrâh, Sa'îd b. 'Amr b. Nufayl, and others. Indeed, he adds, more than one of these figures were nominated for the Caliphate. Thus, while he also assents to the participation in *ijmâ'* of the distinguished *faqîh*, he holds the *usûlî* as more deserving.

Surprisingly, despite his initial defense of *'ilm al-kalâm* as the crowning religious science,[36] he relegates the *mutakallim*, as well

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[35]Qur'ân, 21:7.

[36]Ghazâlî, *al-Mustasfâ*, 1:5-7.

as the grammarian, to the general masses as far as the constituting of *ijmâ'* is concerned. So they are excluded from his community of consensus.[37]

The third question—whether the *mujtahid* who is an innovator (*mubtadi'*) must be among the enactors of *ijmâ'*—arose as a natural result of the emergence of factionalism in the Muslim community in the early Islamic period. Ghazâlî holds that since *ijmâ'* is not valid unless *mujtahids* agree unanimously, even those to whom *fisq* or *bid'a* is attributed must be counted, provided that the charges do not amount to *kufr* (disbelief). In treating what was surely a sensitive issue in his time, Ghazâlî adds that simply charging one with *kufr* is not sufficient; rather, *kufr* must be manifest in the accused's statements and behavior, and corroborated by strongly incriminating circumstantial evidence.

Accordingly, he provides criteria for pronouncing infidelity upon a *mujtahid*. For example, if a *mujtahid* adheres to a belief that necessarily prevents him from acknowledging either the Creator or religion, he is justifiably charged with *kufr*.[38] And such is the case were it established that he denies the Creator, rejects prophethood, or indulges in what the *Sharî'a* prohibits and thereby commits *kufr*, such as prostrating to an idol, worshipping fire,

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[37]Ghazâlî, *al-Mustaṣfâ*, 1:182.

[38]This may be explained best if we give the example of a Muslim that declares acceptance to communism. In Ghazâlî's view such a belief is enough to prove his *kufr*.

rejecting a *sûra* of the Qur'ân, holding that fornication is lawful, etc. But if none of this is true, *ijmâ'* cannot be constituted without his agreement.

Now, the Zâhirites have confined *ijmâ'* to the Companions because of that generations' excellence. Not only were they the *Sahâba* of the Prophet, but they witnessed the coming of revelation; so their consensus would not be based on other than the *Sharî'a*, as opposed to succeeding generations who might concur purely on opinion. B. Hazm defends this notion with fervor in his book *al-Ihkâm fî Usûl al-Ahkâm*.[39]

Ghazâlî, of course, acknowledges the excellence of the Companions as mentioned by the Prophet and in the Qur'ân, but does not agree that this justifies restricting *ijmâ'* only to them. In fact, he argues that this leads to absurdities. For if *ijmâ'* is a source based on excellence, and excellence is invested in Companionship, then the consensus of the *Muhājirûn* (Emigrants) would nullify that of the *Ansâr*, (the Helpers, or people of Medina). And the consensus of the *Muhâjirûn* would be overruled by the consensus of the ten among them whom the Prophet gave tidings of their entrance into Paradise, for they were accorded special status. Yet the agreement of the ten would be challenged by the four Caliphs, who were the most prominent of the ten. And even the four

[39]Ibn Hazm, *al-Ihkâm*, 4:128-235. His particular treatment on the subject of the Companions is on pages 4:146-152. See also his book *Marâtib al-Ijmâ'* (published with *Naqd Marâib al-Ijmâ'* by Ibn Taymiyya), 2nd ed. (Beirut: Dâr al-Afâq al-Jadîda, 1980), pp. 14-19.

Caliphs would be challenged by the statements of Abû Bakr and 'Umar because of their accorded excellence. Consequently, holding *ijmâ'* valid on the primacy of companionship is not valid.

Further, Ghazâlî refutes the confining of *ijmâ'* to the four caliphs.[40] Nor is restricting *ijmâ'* to the Successors together with the Companions sufficient. Rather, the *ijmâ'* of every generation is valid.

Also, among the proponents of *ijmâ'* are those who claim that it is constituted by the majority of the community—especially when their number reaches *tawâtur*. Ghazâlî, however, contends that the rectitude and the validity of the opinion of the majority certainly cannot be considered that of the whole *ummah*, and infallibility can only be established for the entire community.

The Mâlikites confine *ijmâ'* not to a specific generation or number of participants but to a geographic location, namely Medina. They use as proofs for this position the Prophet's *ḫadîths* praising its inhabitants and the fact that he himself received revelation and enacted and enforced the *Sharî'a* with his Companions there.

Ghazâlî does not dispute Medina's excellence and prestige, nor the *ḫadîths* praising its community; but he objects against limiting *ijmâ'* to a place. First, never were all the learned Muslims present in Medina at one particular time either before or after the *hijra*. For a number were sent to other places or simply journeying. And since their agreement is required to constitute *ijmâ'*, this is proof

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[40]Ghazâlî, *al-Mustasfâ*, 1:185-187.

that the *ijmâ'* of those of Medina alone is not sufficient. This of course goes for any other geographical restrictions or their combinations.

Finally, Ghazâlî dismisses the requirement that the number of the people of *ijmā'* after the generation of the Companions reach the number of *tawâtur*. Based on his definition of *ijmâ'*, he holds that it is the opinion of the people of influence which is agreed upon by the general Muslim masses—and this in every generation reaches the number of *tawâtur*. He cites for proof the Prophet's saying that a "group of my community will continue holding to the truth."[41]

THE CONSTITUTING OF *IJMĀ'*

Ghazâlî states that *ijmâ'* is constituted when the opinions of the community on a legal matter concur at a particular time, provided that the opinion is an explicit *fatwā* uttered by the people of influence and not challenged by any of them. Therefore, silence cannot be construed as *ijmâ'*. Moreover, the expiration of the generation constituting an *ijmâ'* (or the period necessary for one generation) is not required before an *ijmâ'* is constituted. In addition, *ijmâ'* can be based on *ijtihâd* or *qiyâs* and does not require an explicit Text.

But while Ghazâlî disputes tacit consensus (*ijmâ' al-sukûtî*) in *al-Mustasfâ*, he himself upheld its validity in *al-Mankhûl* if it met

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[41]Ghazâlî, *al-Mustasfâ*, 1:187.

two conditions:[42] (a) That the people of *ijmâ'* keep silent about a question which is not definite, but is proved definite in their presence though many other factors refute it; (b) That their silence passes without dissent about the point in question.

He goes on to say that if the enactors of *ijmâ'* gather in an assembly and one of them presents his opinion while the others keep silent, this signifies that they simply avoided criticism on that point and does not constitute *ijmâ'*; for the question is of a speculative nature. On occassion judges and jurists may not be publicly criticized as a matter of etiquette or deference for some other reason (which appears to reflect the political volatility of Ghazâlî's time).[43] Yet no one may claim *ijmâ'*.

But in *al-Mustaṣfâ* Ghazâlî's opinion is less tolerant. He flatly rejects tacit consensus, saying that it is neither *ijmâ'* nor has it any binding authority.[44] He contends that the legal position of a jurist is known by his verbal expression which is not liable to uncertainty, while silence is irresolute. He gives seven reasons why one opposed to *ijmâ'* may be silent but disapproving:

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[42]Ghazâlî, *al-Mankhûl*, p. 319.

[43]Ghazâlî, *al-Mankhûl*, p. 319; and Ḫasan, *The Doctrine of Ijmâ' in Islam*, p. 117.

[44]While Ghazâlî makes a provision that it may be permissible only if circumstantial evidence indicates approval, one is hard pressed to think of such occasion since his argument accounts for no such valid circumstance.

1. There may be some imperceptible restraint preventing one from expressing his opinion. The context of his anger coupled with his silence may indicate his position.

2. One may hold the opinion of another scholar as plausible in view of the latter's *ijtihâd*; though he may differ from him, taking his position as being in error.

3. A person may take every *mujtahid's ijtihâd* as correct; or think that responding verbally to a question is a collective rather than an individual duty. So he accepts the opinion of another scholar as correct although it may contradict his own interpretation.

4. A *mujtahid's* silence may actually be expressing his rejection of an opinion, not his approval, and he awaits the proper occasion to express it. Or there may be an impediment keeping him from immediately pronouncing his opinion, and he awaits its elimination in the mean time. So one may die before finally revealing his objection, or be engaged in some other work which distracts him from the point in question.

5. One may be particularly apprehensive in pronouncing his opinion out of fear or in avoidance of disgrace. B. 'Abbâs accounts for his silence over *'awl* (increase in inheritance) by saying that he was afraid of 'Umar during his lifetime as he was an awe-inspiring man.

6. A *mujtahid* may be in the process of considering the matter during his silence. His contemplation may be prolonged.

7. He may suppose the rejection of others, regarding it as a pronouncement on his behalf. But he may be wrong in his presumption.[45]

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[45]Ghazâlî's analysis of the motives that may have kept one *mujtahid* silent were not purely hypothetical. They mirrored the religio-political conditions of the Muslim society.

He quotes endorsers of tacit consensus as countering that (a) had there been rejection of its status, it would have surfaced and been widely known. In view of the absence of this, its acceptance is implied; and (b) there is decisive proof that the Successors did not renounce difficult questions that the Companions approved silently—which suggests that they honored tacit consensus.

In general, Ghazâlî's position is that rulings based on tacit consensus are arbitrary, while the infallibility of *ijmâ'* is, in fact, established by unanimous agreement, not by arbitrary opinion. With reference to the first argument, the same thing can be said about agreement. That is, whatever prevents disagreement from emerging may prevent agreement as well. This refutes the opinion of al-Jubbâ'î who stipulates that there be a lapse of time for tacit consensus to be considered valid. (It may also be noted that the restraint may continue till the end of the generation.)

Secondly, this *ijmâ'* of the Successors has never been formally accepted. Rather, disagreement about it has all along been disputed among scholars. The astute ones, Ghazâlî charges, are well aware that silence is doubtful and that the opinion of a segment of the community does not constitute validity.[46]

Besides refuting tacit consensus, Ghazâlî also disparages the notion that the generation of an *ijmâ'* must pass before consensus is effected. *Ijmâ'*, he says, is immediately constituted when the

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[46]Ghazâlî, *al-Mustaṣfâ*, 1:192; and Ḫasan, *The Doctrine of Ijmâ' in Islam*, p. 114-115.

people of *ijtihâd* unanimously agree on a particular position. His refutation rests on Texts establishing *ijmâ'*, the locus of *ijmâ'*'s authority, and the practice of the first two generations of Muslims.

First, the *Sharî'a* texts justifying *ijmâ'* include no condition for the passing of a generation or the death of the people who constituted it.

Second, authority lies in the agreement itself, be it in a legal or religious matter, and not in their death or in the expiration of the generation. Indeed, any consenter to the *ijmâ'* who changes his opinion after the consensus has been achieved is, in fact, opposing the *ijmâ'* and his altered opinion cannot invalidate its constitution.

Third, the practice of the Successors reveals that they not only relied on the consensus of the Companions but cited it as a proof during the lifetimes of some of them who lived long, such as Anas b. Mâlik and others. Therefore, had the passing of a generation been required, they would not have permitted this.[47]

Finally, concerning whether *ijmâ'* need be based on an explicit text, Ghazâlî cites the opinion of legists who require that a *fatwâ* be certain and not conjectural if it is to be valid for consensus. Therefore, they do not accept an *ijmâ'* that is based on *ijtihâd*. For *ijtihâd* may hit or miss the truth, be correct or incorrect. And it is not allowed in their view that the *ummah* agree on anything that is liable to error. Also, they argue that an *ijmâ'* constituted on an issue where a *mujtahid* is allowed to agree or

[47]Ghazâlî, *al-Mustaṣfâ*, 1:191-192.

disagree is invalid. For any *ijmâ'* on an issue subject to *ijtihâd* is in violation of the *ijmâ'* that invests anyone capable with the right to exercise *ijtihâd,* though it be in opposition to another's. Simply, a *mujtahid* cannot be prevented from *ijtihâd.*

Ghazâlî replies once again that the infallibility of the *ummah* takes the place of the infallibility of the Messenger. Fearing error with reference to *ijtihâd* is correct, but only with individuals or a part of the community. However, when the totality of the community unanimously agrees on a legal opinion, their consensus is error free. Thus, requiring that the issue upon which *ijmâ'* is constituted be decisive is itself an arbitrary opinion. Therefore, he concludes, *ijmâ'* may be constituted based on *ijtihâd,* and cites the practice of the Companions and the Successors in support of this opinion.

THE STATUS OF *IJMĀ'*

Ghazali states clearly that when *ijmâ'* is constituted it must be followed, and opposing it is prohibited. This entails certain implications about the principle's status, since it immunizes the *ummah* from falsehood.[48]

If the community, then, unanimously agrees that the correct positions with regard to a particular question can only be two, a third response is not permissible; for this would be in violation of *ijmâ'*.

If the Companions have two positions with regard to a legal

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[48]Ghazâlî, *al-Mustaṣfâ,* 1:198.

question, but their Successors agree upon one of them, this does not justify neglecting the other position. One may act on its basis.[49]

In the transmission of *ijmâ'*, one cannot rely on a solitary report, for *ijmâ'* exerts authority over issues in the Qur'ân and the *mutawâtir Sunna*. Hence, it is not proper to allow an *ijmâ'* that has been transmitted by solitary report to overrule *mutawâtir* and decisive Texts.

Finally, common factors discerned between diverse or contrary opinions cannot be regarded as consensus. For there must be formal, explicit agreement on a question to constitute *ijmâ'*.

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[49]Ghazâlî, *al-Mustasfâ*, 1:205.

CHAPTER V

ISTIṢḤĀB AND REASON
THE FOURTH SHARI'A SOURCE

Criticism of personal legal opinion (*fiqh al-ra'y*) and *qiyâs* by the *muḥaddiths*, the Ẕâhirites, and some Mu'tazilites in the centuries preceding Ghazâlî caused him to reexamine the nature of *qiyâs*. Having found neither text nor rational proof to justify it as the 'Fourth Source,' he consigns it to an operation guiding the process of *ijtihâd*, i.e., a method for the *mujtahid* to arrive at *Sharî'a* rules.[1]

On the one hand, the Ash'arite position—which of course Ghazâlî had adopted—held that *'aql* (reason) has no power to originate *Sharî'a* rules or recognize them save by way of revelation. On the other hand, the Mu'tazilite dogma exalted reason, declaring it able not only to discern the inherent good or evil of acts and

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[1] Abû Isḥâq al-Shirâzî, a prominent Shâfi'ite who died 476 H., cited in *Kitâb al-Luma' fî Uṣûl al-Fiqh* (Cairo: Muḥammad 'Alî Ṣabîḥ wa Awlâd, n.d.), pp. 56-57, the disputes of al-Naẕẕâm, some of the Mu'tazilites from among the people of Baghdad, and others concerning the validity of *qiyâs* as a source. Ghazâlî agrees with him in *al-Mankhûl*, where he cites the attack of many against rational *qiyâs* and *Sharî'a qiyâs*. See Ghazâlî, *al-Mankhûl*, p. 331; and 'Alî b. Aḥmad b. Ḥazm, *Kitâb Mulakhkhas Ibṭâl al-Qiyâs wa al-Ra'y*, ed. Sa'îd al-Afghânî (Damascus: University of Damascus Press, 1960).

objects, but also to legislate their obligation, prohibition, or permissibility. These considerations likely influenced Ghazâlî's view of reason and its function in the context of the other *Sharî'a* sources.

He posits in the opening of his discourse on the *Sharî'a* sources that *'aql* cannot independently establish *Sharî'a* rules. Thus, calling it a *Sharî'a* source can be tolerated only in the figurative sense—and this after the coming of revelation and the laying down of Law.[2] Yet reason, he says, has a crucial role in proving that the *Sharî'a* rules did not obligate man before the arrival of revelation. This is the original and universal rule that Ghazâlî defends and contends one must act in accordance with, even in the presence of revelation and the *Sharî'a* in areas where it either has not specified a rule or taken a position.

Ghazâlî explains that originally man is unobliged. Only when a messenger comes telling him that God has obliged him with, say, five daily prayers, does he become obligated. But in this case a sixth prayer or a seventh remains unobligated—not because the prophet has indicated such, but because reason has proved its original state of negation, that man originally is not obliged before the laying of *Sharî'a* obligation through revelation. Indeed the bidding of the messenger is restricted to the obligatoriness of the five daily prayers.

In other words, revelation establishes *Sharî'a* rules. Reason proves their negation in the spheres where the *Sharî'a* has not

[2]Ghazâlî, *al-Mustaṣfâ*, 1:100.

confirmed or established them. This original negation of obligation (*taklîf*) continues by the principle of *istishâb*.[3] This, Ghazâlî suggests, is the Fourth Principle and one of the three valid meanings of *istishâb*.

Another of its meanings is that a general *Sharî'a* command blankets all that comes under it until the *Sharî'a* brings specifying rules which except certain acts. Otherwise, the text continues in effect until a Sharî'a address is established to change or suspend its ruling.

Ghazâlî exemplifies a *Sharî'a* rule's perpetuation by the obligation of fasting *Ramadân* and the annual paying of *zakât*. One needs no new *Sharî'a* rule to fast the *Ramadân* of the following year, or to pay the new year's *zakât*. Rather, the original rule is perpetually operative by way of *istishâb* whenever *Ramadân* or a new year arrives.

The *fuqahâ'* have disputed, however, with regard to one who negates a *Sharî'a* rule claiming his decision to be based on *istishâb*, namely the continuation of the original state of freedom or non-obligation. Some of the *fuqahâ'* require such a person to furnish proof for his negation. Others do not require it.

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[3]Linguistically, the root meaning of *istishâb* is to associate, accompany, consort. Lane, *Arabic-English Lexicon*, 4:1652. It connotes association between a past occurence and present status. Technically, the *fuqahâ'* differ about its meaning, but in general it expresses the perpetual validity of a rule until that rule is proven changed or qualified.

Ghazâlî basis his reply to this question on the nature of the knowledge of the supposed negating rule. In other words, if it is necessary knowledge accepted by everyone without any opposition, Ghazâlî does not stipulate that proof be given since what is known necessarily and accepted is its own proof. This is founded on rational grounds. For example, he says, human beings necessarily know that they do not live in the midst of the ocean's whirl or seated upon a bird's wing.

If, however, the claim to *istis̲h̲âb* concerns matters of speculative knowledge, anyone negating the rule must provide proof. A person, for instance, who denies the origination of the world, the existence of the Creator, or the prohibition of fornication, must demonstrate his assertion.[4]

In accepting these three forms of *istis̲h̲âb* Ghazâlî is true to his conviction that the right to legislate belongs exclusively to God. Therefore, if a *mujtahid* exerts himself to arrive at a ruling, but finds no *Sharî'a* proof, the act or subject of his search remains in the status of the original state of freedom (*al-barâ'a al-as̲lîyya*). So it does not fall under any of the five *Sharî'a* categories.[5]

Similarly, established *Sharî'a* rules remain until they are abrogated by another *Sharî'a* address. The function of reason here

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[4]Ghazâlî, *al-Mustas̲fâ*, 1:234.

[5]Ghazâlî distinguishes between the acts that the *Sharî'a* holds as *mubâh̲* [permissible] and others that the *Sharî'a* has not specified as permissible. He says that the latter remain in the original state of nonobligation, i.e., permissible, not due to an explicit Text, but based upon their original status.

facilitates for the *mujtahid* the search for the existence or nonexistence of *Sharî'a* rules that change an act's original state of freedom. Likewise, reason enables the *mujtahid* to recognize the nonexistence of *Sharî'a* rules that might have changed an act's original state of nonobligation. This seems to imply that *istishâb* is the last source by which a *mujtahid* ascertains knowledge of a *Sharî'a* rule in regard to which there is no specification in the preceding three sources, namely, the Qur'ân, the *Sunna*, and *ijmâ'*.[6]

Yet Ghazâlî's estimation of *al-istiṣḥâb wa dalîl al-'aql* to be the 'fourth *Sharî'a* source' also appears only tolerable in the figurative sense. For *istiṣḥâb*, like *qiyâs*, is an activity of the *mujtahid* which does not originate *Sharî'a* rules. Instead, it proves the continuity and reinforcement of their already existing status. And it can be said, perhaps, that it circumscribes them as well, preventing either their expansion or restriction.

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[6]Among the forms of *istiṣḥâb* that Ghazâlî rejects is *istiṣḥâb al-ijmâ'* in the domain of dispute. Concerning a *mutayyammim* who sees water during prayer, Ghazâlî cites the position that he should continue the prayer, for consensus is claimed to have been constituted on the rectitude of his prayer and its continuance. Therefore, the presence of water is just like the occurrence of the blowing of the winds, the coming of the dawn, and other natural events. He holds, however, that this is corrupt, for *ijmâ'* has been constituted on the rectitude of continuing prayer after performing *tayammum* only in the absence of water. As for the case of the incidental availability of water, there is dispute and one is not permitted to cite as proof the fact that *ijmâ'* has been contsituted on the validation of such a disputed question; for it is not proof. *Al-Mustaṣfâ*, 1:223.

It may be for this reason that several H̲anafite scholars, like al-Dabbûsî, acknowledge *istis̲h̲âb* to be a valid *Sharî'a* principle insofar as it negates *taklîf* in the absence of *Sharî'a* rule, but not in establishing it. In other words, *istis̲h̲âb* is a proof that indicates the continuity of what exists until a contrary rule is established. If, for instance, one's marriage is recognized, the marriage contract continues to be valid until its nullification is decisively brought forth. Or, if, for example, a person performs *tayammum* in the absence of water, but then water is brought to him during his prayer, he should continue his prayer; for *ijmâ'* has been constituted on the rectitude of his prayer and its continuation, but not on the breaking of such a prayer upon the availability of water.

CHAPTER VI

NASKH (ABROGATION)

The *Sharî'a*, having been revealed by the All-Knowing, the All-Wise, raises an important juridical and theological question: Is it possible to abrogate its divine rules?

According to Ghazâlî, some *fuqahâ'*—including a substantial number of Mu'tazilites—do not think it befitting for the Omniscient to 'change His mind' and abrogate what He previously commanded or prohibited. This, they contend, contradicts divine perfection and leads to *Sharî'a* contrarieties. Consequently, they reject outright the concept of *naskh*[1]; that is, the notion that the *Sharî'a* rules are abrogatable. They claim that what Ghazâlî and the classical Muslim jurists call '*naskh*' is actually specification of or time requirements for previously laid rules. But it is not elimination.

Ghazâlî, however, says that any rule established by a *Sharî'a* address can be removed by another such address coming after it.

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[1]Ghazâlî says that the linguistic meaning of *naskh* is to remove or eliminate. It may also mean to annul, supersede, obliterate, abolish, efface, or cancel. See Manẕûr, *Lisân al-'Arab*, 3:61; al-Ṯâhir Aẖmad al-Zâwî, *Tartîb al-Qâmûs*, 2nd ed. 4 vols. (Beirut: Dâr al-Fikr, n.d.), 4:362; Lane, *An Arabic-English Lexicon*, 8:2788; and Muẖammad Murṯaḏa al-Ḫusaynî Zabîdî, *Tâj al-'Arûs*, 10 vols. (Cairo: Khayriyya Press, 1306 H.), 2:282.

Not only is this rationally possible, he argues, but it has actually occurred in the *Sharî'a*, leading to neither absurdity nor contradiction. Thus, he clearly states in his definition that *naskh* differs from both *badâ'* (change of mind) and *takhṣîṣ* (specification). In fact, *naskh* is an essential device of the *Sharî'a* for removing irreconcilable contradictions in the Texts.

Ghazâlî's argument for the occurrence of *naskh* in the *Sharî'a* is based on *ijmâ'*, stating that the entire *ummah* has unanimously agreed that the "*Sharî'a* of Muḥammad, peace be upon him, has abrogated all of the *sharî'as* of those [prophets] before him." He adds that *naskh* was accepted among the Companions and their Successors well before the time of those who deny it. So, this is a *Sharî'a* proof against them, according to Ghazâlî, for he holds its disputants to be in opposition to *ijmâ'* in rejecting its existence.

Besides *ijmâ'*, Ghazâlî quotes the Qur'ân in support of its legitimacy, not only as part of the *Sharî'a* of Muhammad, but also the *sharî'as* of the prophets before him:

- *It was for the evil doings of Jews that We have forbidden them certain good things that were permitted to them . . .*[2]

- *And when We substitute a verse in place of another verse—and Allâh knows very well what He sends down—they say you are a forger. Rather, most of them have no knowledge.*[3]

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[2]Qur'ân, 4:160.

[3]Qur'ân, 16:101.

- *And whatever verse We abrogate or cause to be forgotten,We bring one better or its like . . .*[4]

Moreover, he says that the Qur'ân itself indicates many *Sharî'a* rules that have been abrogated, such as the change of the *qibla* from Bayt al-Maqdis in Jerusalem to the Ka'ba in Mecca, or the abrogation of the widow's waiting period (*'idda*) before remarriage from one year to four months and ten days.

ABROGATION AND SPECIFICATION

Ghazâlî explains that mistaking *specification* for *abrogation* stems from the fact that both alter the effected rule's original meaning. However, they are not synonyms linguistically or in the vocabulary of the *fuqahâ'*. He lists five distinctions between them:[5]

1. While abrogation cannot take place except on the basis of a *Sharî'a* address, specification may occur based on reason or circumstantial evidence.

2. It is 'required' that the abrogating *Sharî'a* address follow the abrogated rule after a delay, while the specifying address may be conjoined to or arrive at the same time as the specified one.

3. If the *Sharî'a* command or prohibition is directed toward a single act, it is possible to abrogate it. But it is not possible to specify a *Sharî'a* command that includes only one act. To illustrate this, the command to change the direction of the *qibla* from Bayt al-Maqdis to the Ka'ba is a change of a *Sharî'a* rule which falls under abrogation, not specification; for had it been specification, then the command would be

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[4]Qur'ân, 2:106.

[5]*al-Mustasfâ*, 1:110-111.

to pray in the direction of a specific part of Bayt al-Maqdis. But since it was changed entirely to the direction of the Ka'ba, it is abrogation, for it eliminates the previous command.

4. Abrogation eliminates the implications of the abrogated command as well as what was bidden or prohibited, while specification maintains the implications of the specified *Sharî'a* rule that fall outside the domain of the specification.

5. Abrogating the Qur'ân and the *mutawâtir Sunna* is not allowed except by similar *mutawâtir* texts, i.e. either the Qur'ân or *Sunna*, while it is possible to specify a *mutawâtir* text on the basis of *qiyâs*, solitary reports, and other valid evidences.

In addition, Ghazâlî implies another distinction between the two addresses (which was elaborated by al-Shawkânî after him). While it is possible to abrogate a preceding *Sharî'a* of a past prophet by the *Sharî'a* of a following prophet, it is not possible to specify one *Sharî'a* by another.[6]

ABROGATION AND THE *SHARÎ'A* ADDRESS

By defining *naskh* as the elimination of one *Sharî'a* rule by another coming after it, Ghazâlî necessarily locates the right of abrogation as solely with the Lawgiver and restricts it to the

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[6]See al-Shawkânî, *Irshâd al-Fuhûl*, p. 143. Al-Amidî, in *al-Ihkâm*, 3:282, added that specification applies to reports as well as rules, while abrogation applies to the *Sharî'a* rules. Also, abrogation applies to the general and particular commands or prohibitions of the *Sharî'a* while specifications applies only to the general ones. See also Nâdia al-'Umarî, *al-Naskh fî Darâsât al-Usûliyyîn* (Beirut: Mu'assasa al-Risâla, 1980), p. 555.

lifetime of the Messenger, since the *Sharî'a* was revealed through him alone. Thus, the unicity of the divine source of the *Sharî'a* necessitates harmony between decisive texts, be they from the Qur'ân or the *mutawâtir Sunna*, according to Ghazâlî,[7] who provides an excellent discourse on the coherence of the *Sharî'a* texts and the absence of true contradiction.[8] Simply, if contradiction is conclusively established between two texts, then one of the two has been abrogated. For abrogation is the sole mechanism for eliminating any conclusive contradiction that renders impossible the enforcement of the rules established by the separate texts.

Although in actuality it is impossible for all the *Sharî'a* rules to be abrogated, in principle *naskh* may apply to any textual rule so long as its conditions are met. In this he takes issue with the Mu'tazilites who bar abrogation of any rule whose act is inherently good or evil. Their position, he argues, implies restricting God in prohibition and command. And since obligation issues by His will, it is His right to abrogate any rule that He bade man perform.

God's abrogation, then, is necessarily expressed by way of explicit *Sharî'a* text indicating the elimination of whatever obligation upon responsible beings to fulfill an earlier command. Hence, eliminating obligation vis á vis other than an explicit *Sharî'a* address is not abrogation. Death, for example, eliminates obligation from the deceased. Yet it is not abrogation.

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[7]Ghazâlî, *al-Mustasfâ*, 2:392.

[8]This has been cited by al-Zarkashî, in *al-Burhân fî 'Ulûm al-Qur'ân*, 2:46-48.

One of the more controversial positions that results from the expansion of Ghazâlî's definition is that it is allowable for the *Sharî'a* rules either of the Qur'ân or the *Sunna* to abrogate the other, since both are revealed.[9] In other words, *Sharî'a* rules indicated by the Qur'ân may be abrogated by those of the *Sunna* and vice versa. Not only is this rationally justified, he says, but no text proves otherwise.

To underscore that his view is indeed in conformity with the Qur'ân and the *Sunna*, Ghazâlî first introduces verses claimed by his opponents to prove that the *Sunna* cannot abrogate the Book and then refutes their proofs by reinterpretating the Texts. The first of them:

> *And when Our signs are recited to them, clear signs, those who look not to encounter Us say, 'Bring a Qur'ān other than this or change it.' Say, 'It is not for me to change it of my own accord. I follow only what is revealed to me*[10]

they hold to demonstrate that the Prophet cannot 'change' the Qur'ân, implying that his *Sunna* therefore cannot abrogate the Book. They infer from the second verse:

> *And for whatever verse We abrogate or cause to be forgotten, We bring a better or the like of it. Know that God is powerful over everything*[11]

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[9]See Ghazâlî's definition of revelation with respect to *Sunna* in our chapter on *Sunna* above.

[10]Qur'ân, 10:15.

[11]Qur'ân, 2:106.

that no one but God is capable of revealing an equivalent or 'better' verse. And since the *Sunna* is neither better than the Qur'ân nor its like, it cannot abrogate the Book.

With reference to the first verse, Ghazâlî explains that the Messenger does not alter the Qur'ân of his own accord. Rather, it is based on what God revealed to him. Simply, the *Sunna* too is revelation, but not in the form of the Qur'ân.[12] Thus, in the final analysis, it is not the Prophet who abrogates; it is God. And nothing prevents Him from abrogating His revelation manifested in the Qur'ân by His inspiration brought down in the *Sunna*.

Similarly, the second verse does not make it conditional for the abrogation of the Qur'ân to be solely by the Qur'ân, but through any revelation God brings. He names what he holds to be precedents in defense of this, such as the peace treaty between the Prophet and the Meccans that bound him to extradite women converts to Islam seeking refuge in Medina. This was abrogated by the verse:

> *O believers, when believing women come to you as emigrants, test them. God knows very well their belief. Then if you know them to be believers, return them not to the unbelievers.*[13]

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[12]Ghazâlî, *al-Mustasfâ*, 1:125.

[13]Qur'ân, 60:10.

As for the *Sunna* abrogating the Qur'ân, Ghazâlî—lacking any unanimously agreed upon cases—cites:

> *Prescribed for you, when any of you is approached by death and he leaves behind some goods, is to make testament in favor of his parents and kinsmen honorably, an obligation on the God fearing.*[14]

He holds that this verse is abrogated by the Prophet's statement, "There is no bequest for an inheritor."[15]

However, a closer examination of the various texts of this *ḥadîth* shows that (a) in one version it concludes with, "Indeed God has given all eligible persons [of inheritance] their rights." Thus, there is no bequest for an heir because what he or she is to receive has been already determined by the Qur'ân. So based on the *ḥadîth*, it is forbidden for a legal heir to receive additional wealth; and (b) that the abrogating address is none other than the verses of inheritance. For the Prophet, in stating that "indeed God has given all eligible persons [of inheritance] their rights," is calling attention not to his own statement but to these verses as abrogating the text, "*Prescribed for you . . . is to make testament in favor of his parents and kinsmen. . . .*"

In sum, closer examination reveals that the Prophet is indicating that it is the Qur'ân that has ultimately abrogated the

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[14]Qur'ân, 2:180.

[15]See Wensinck, *Concordance*; 7:187.

Qur'ân.[16] Moreover, the *hadîth*—which is not cited in full in the first place—is not *mutawâtir*; and Ghazâlî himself holds that it is not possible for a *Sharî'a* rule expressed by a *mutawâtir* text to be abrogated by a *non-mutawâtir* address.[17] The remaining cases that Ghazâlî notes as illustrating the possibility of the *Sunna* abrogating the Book are not convincing and may be interpreted, perhaps more appropriately, in ways other than indicating abrogation.

Indeed, al-Shâfi'î's position that the *Sunna* cannot abrogate the Qur'ân is more plausible and worthier of acceptance.[18] He concludes in his *usûlî* work *al-Risâla*, that "God has made it clear to them that what He has abrogated from the Book, He has done so by the Book alone. The *Sunna* cannot abrogate the Book. It only follows it."[19]

THE ABROGATION OF *SUNNA*

Ghazâlî holds that a *Sharī'a* rule based on a solitary report can be abrogated by either a similar solitary report or a *mutawâtir* one. But a *Sharî'a* rule established by *mutawâtir Sunna* can be abrogated only by an equivalent *mutawâtir* text. For *mutawâtir*

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[16]al-Pazdawî hints at this subtle point. 'Abd al-'Azîz al-Bukhârî, *Kashf al-Asrâr 'alâ Usûl al-Pazdawî*, 4 vols. ed. Ahmad Râmiz (n.p.: Hasan Hilmî al-Rayzawi, 1307 A.H.), 3:898.

[17]Ghazâlî, *al-Mustasfâ*, 1:126.

[18]Ghazâlî, *al-Mustasfâ*, 1:124; and *Mankhûl*, p. 293.

[19]al-Shâfi'î, *al-Risâla*, p. 106.

Sunna ceased being abrogatable by solitary report with the sealing of revelation upon the death of the Prophet. Although Ghazâlî concedes that the Prophet sent abrogating rules with a few Companions to various places in Arabia—far less than what would constitute *tawâtur*—he does not infer from this that it is possible for a solitary report to abrogate *mutawâtir Sunna*. He argues instead that this practice was permissible only in the time of the Prophet, since he was capable of resolving any misrepresentations or inaccuracies on the part of reporters, for revelation was available to him. "But this is impossible after his death," he contends, "based on the proof of the Companions' *ijmâ'* that the Qur'ân and the explicit *mutawâtir* reports cannot be eliminated on the basis of solitary reports."[20] Furthermore, the mere statement of a Companion that "such and such rule was abrogated" is not valid unless he explicitily states that he has actually heard the Prophet say so. Hence, the Companion's statement is goverened by the criteria for classifying Prophetic traditions. Thus, if it is a solitary report, it can only abrogate its like.[21]

However, Ghazâlî opines that *ijmâ'* itself is not capable of abrogating *Sharî'a* rules as it was not a *Sharî'a* source during the lifetime of the Messenger, when revelation was descending. For

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[20]Ghazâlî, *al-Mustasfâ*, 1:126.

[21]Ghazâlî, *al-Mustasfâ*, 1:128.

only through revelation can an abrogating *Shari'a* address be known.[22]

As for *qiyâs*, it is essentially based on the personal opinion of a *mujtahid*, and concjectural opinion cannot serve as the basis for the abrogation of a conclusive *mutawâtir* Text.

In addition, since only the *Sharî'a* rules are subject to abrogation, *naskh* does not apply to textual statements about the past or the future (*akhbâr*); nor to texts of tidings or admonition (*al-wa'd wa al-wa'îd*), rational judgements; nor to the original state of freedom, before the coming of *Sharî'a*. For in the latter instance, substituting the original state of freedom with *Sharî'a* obligation is not 'elimination' of a previous *Sharî'a* rule. By definition, then, it is not abrogation.[23]

THE ABROGATING AND THE ABROGATED ADDRESS

Given that *naskh* removes irreconcilable contradicitions in the *Sharî'a* texts, Ghazâlî does not rely on reason alone to distinguish the abrogating rule from the one it abrogated. For the basic premise is that when two texts are "mutually contradictory, the abrogating one is the later." Based on this, Ghazâlî sets criteria for determinining their sequence. Examination of the transmissions, the content of the text itself, and the *ijmâ'* of the community are

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[22]Ghazâlî, *al-Mustasfâ*, 1:126.

[23]For more information, check our treatment on *istishâb* in this Introduction and Ghazali's discussion in *al-Mustasfâ*, 1:217-245.

the only means by which one is able to determine the prior rule from its abrogating counterpart. Consequently, it is not valid to draw analogy from a third text to establish which of two contradicting addresses is the abrogating one.

If, for instance, a Companion transmits a *ḥadîth* and dies even before another who transmits the contradicting *ḥadîth* receives it from the Prophet, we know necessarily that the latter reported the abrogating rule. Or, when a transmitter specifies the date in which he has heard the Prophet, saying, for example, "I heard the Prophet in the Year of the Trench" while another says, ". . . in the year of the conquest of Mecca," then we know that the text stated in the conquest of Mecca is the abrogating one.

Also, the *Sharî'a* address itself may indicate the abrogation, as in the Prophet's saying, "I had previously prohibited you from storing the meat of sacrificial animals; now store them;" or, "I had forbidden the visiting of graves; now visit them." In such cases, the abrogation and the timing of the commands are self-evident.

The *ijmâ'* of the scholars is also a valid source for establishing the sequence of texts, thus identifying the abrogating one. Again, however, this is the extent of its use in *naskh*, according to Ghazâlî.

Following his criteria for distinguishing an abrogating text from an abrogated one, he mentions six standards stipulated by other jurists, which he claims to be invalid. For, according to him, they do not establish the timing of the *Sharî'a* address.

The first is when a Companion states, "Such and such rule was laid upon us. Then it was abrogated." Ghazâlî argues that this may

have been stated on the basis of his personal opinion (*ijtihâd*) and, therefore, it is not conclusive.

The second is determining the sequence of abrogation based on the present order in the Qur'ân, namely that a verse in the ninth sûra abrogates what is in the sixth. This is not at all acceptable since the *sûras* and verses are not placed in the chronology of revelation. In fact, often what was revealed in the later periods appears in the beginning of the Book.

The third method is that the abrogating reporter be one of the younger Companions. But it is possible that the younger reporter is transmitting from one whose Companionship is more senior. Moreover, the senior Companions occasionally transmited from the younger ones and vice versa.

The fourth is that if the transmitter became a Muslim in the year of the conquest of Mecca, but does not say when reporting, "I heard it in the year of conquest," then it is the abrogating address. Ghazâlî replies that he may have heard this while he was an unbeliever and transmitted the report after accepting Islam. Or, he may have heard it from someone who had been a Muslim long before him.

The fifth is taking into account a report of a person whose Companionship was known to have been severed, so that it may be assumed that his report antedates the report of someone whose Companionship continued. Ghazâlî opines that although this may be assumed, it does not necessarily follow that his report decisively came after the one whose Companionship was severed.

The sixth is that if one of the two reports is in accordance with the judgement of Reason and the original state of freedom, then *it* is the prior address. But this is not necessarily so. For example, the Messenger said, "Ablution is not required after eating that which contacts fire." This does not necessarily precede the obligatoriness of making ablution after eating what has contacted fire. It is equally possible that this cause for ablution had been obligatory but was then abrogated.

Ghazâlî's definition also requires that the *Sharî'a* address expressing abrogation come after a period has lapsed from the revelation of the rule it abrogates. So it is inconceivable for abrogation to be valid (a) before the advent of a subsequent address, (b) as one of two simultaneous addresses, or (c) conjoined with another address. Moreover, both the abrogating and the abrogated addresses, according to Ghazâlî, must be in contradiction such that obeying both of them leads to absurdity in every situation.[24]

In harmony with his view that abrogation applies to any *Sharî'a* rule, Ghazâlî contends that it is possible to abrogate a *Sharî'a* obligation even before it is possible to comply with it. For he holds that the elimination of the previous rule occurs at the moment the abrogating address is revealed. This, of course, raises a number of problems for Ghazâlî to address. One notices, however, his superfluous preoccupation with questions of *kalâm* in his detailed treatment of these issues and in the elaborate argument

[24]Ghazâlî, *al-Mustaṣfâ*, 1:122.

he wages against the Mu'tazilites. Although he acknowledges these issues as more properly belonging to *kalâm*,[25] he nevertheless proceeds with a tedious answer to a simple question as far as *usûl* is concerned, bogging down in numerous rational and traditional proofs.[26] The following example, for instance, is a single argument extracted from one of two clarifications subsumed under two questions that Ghazâlî answers in the second aspect of his position on the possiblity of abrogating a *Sharî'a* rule prior to the obligation's due time of compliance:

> Thus, the decisive proof that it is possible in revealed authority is the story of Abraham, عليه السلام, namely, the abrogation of [the command to] sacrifice his son before [his] performance [of the act], and the statement of Allâh, تعالى, "*We ransomed him [Isma'îl] with a great sacrifice*" [Qur'ân, 37:107]. So he was commanded with one act and did not neglect hastening and submitting [to obey]; then it was abrogated. This is difficult for the Mu'tazilites to comprehend, to the extent that they arbitrarily interpret it and are divided into different groups.
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> They sought to resolve this in five ways. The first of which is [holding] that this was a dream [of Abraham], not a command.

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[25]Ghazâlî, *al-Mustasfâ*, 1:114.

[26]It may be useful to bring an exerpt of Ghazâlî's argument for the permissibility of abrogating a *Sharî'a* rule before the time to comply with it arrives. He cites the Qur'ânic story of Abraham and Ismâ'îl in *al-Mustasfâ*, 1:115-116. I choose to bring it here, in spite of its relative lengthiness, also to show a typical Ghazâlî *Sharî'a* argument whose style is repeated often in *al-Mustasfâ*.

The second is that he was commanded; but it was intended to oblige him with [only] the determination to perform the act in order to test his heart for patience in determination. Thus slaughtering was not commanded per se.

The third is that the command was not abrogated, but Allâh, تعالى, changed [Isma'îl's] neck into copper or iron so that it was not cut. Thus, the obligation was terminated because of the impossibility [to fulfill it].

The fourth concerns disputing what has been commanded, which was to throw him down on his forehead, passing the knife without actual slaughtering.

The fifth is rejecting abrogation and saying that he slaughtered him obediently, then it [his neck] was rejoined and healed. Those who hold this interpretation agree that Isma'îl was not slaughtered. But they differ with regard to Abraham being the slaughterer. Some have said that he was the slaughterer for he did cut [him], while the son was not slaughtered because of the healing. Others have said that being a slaughterer without a slaughtered subject is impossible.

All of this is abusive and artificial.

As for the first, namely that it was a dream, the dreams of prophets are part of prophethood. And they came to know the commands of Allâh, تعالى, through them. Indeed, the prophecy of various prophets was solely through dreams. What indicates his comprehension of his command is the statement of his son, "*Do as you have been commanded*" [Qur'ân, 37:102]. If he [Abraham] had not been so commanded, he [Isma'îl] would be a liar. Also, intending to slaughter and to throw [his son] down on [his] face is not possible on the basis of an unfounded dream. Furthermore, He has called it "*a manifest trial*" [Qur'ân, 37:106]. And what trial is there in a dream? And what is the sense of sacrifice?

As for the second, namely that he [Abraham] was commanded to test his determination, this is impossible

because He who knows the unseen is not in need of testing. Also, since testing occurs only through obligation, then if obligation does not exist, testing does not occur. Moreover, their statement, "Determination is the obligation," is absurd because determination [to obey] what is not obligatory is not mandatory [in itself], for it follows the [rule] of the determined object; and determination is not obligatory as long as one does not believe in the obligatoriness of the determined object.

Even if the determined object was not mandatory, Abraham, عليه السلام, would have been more deserving to know this than the Mu'tazilites. Why should it not be so when he [Abraham], said, " . . . *I saw in a dream that I shall sacrifice you*." And so his son said to him, "*Do as you have been commanded*," meaning slaughtering. Also, His saying, تعالى, /1:116/ " . . . *He threw him down on his face*," is surrendering to the action of slaughtering, not to determination.

As for the third, namely that laying down and nothing more than it is what is commanded, this is absurd. For this cannot be called sacrificing, nor is it an affliction. And it does not need sacrifice after obedience

As for the fourth—denial of abrogation and that he [Abraham] had obeyed, but his [Isma'il's] neck turned to iron, thus it was beyond [his] ability, terminating the obligation—this is incorrect according to their principles. For commanding what is conditional is not established according to them. Rather, since Allâh, تعالى, knew that He will turn his [Isma'il's] neck into iron, He would not, therefore, be commanding that which He knows to be impossible and will not need ransom. Thus, it would not be an affliction on his part.

As for the fifth, namely that he did [sacrifice Ismâ'îl], but it healed, this is absurd because how could ransom be needed after the healing? And if this were true, this would have been known and become one of His manifest signs. Yet

this has never been reported. Rather, it is just an invention on the part of the Mu'tazilites.

Approach aside, however, Ghazâlî's acceptance of the instantaneousness of abrogation ultimately raises controversy about the binding effect of the abrogating address upon those who are unaware of it. He takes a middle position between jurists who hold that abrogation is binding upon everyone, without exception, and others who say that it is not binding until it reaches the locus of obligation. As for whomsoever the abrogating address did not reach, they remain obliged by the prior address, according to Ghazâlî—even though the new command is in effect. Although this implies a time lag between the actual abrogation and one's awareness of it, Ghazâlî is hesitant to require such persons to perform *qaḏâ'* [restitution] for missing performance of the new obligation between the time it was revealed and the time it reached them.[27]

GHAZALI VERSUS AL-SHĀFI'Ī ON SUBSTITUTION (*BADAL*)

Al-Shâfi'î's discussion on *naskh* in his *Risâla* places him among those who require that the abrogation of a rule be substituted by another rule. "Obligation," he says, "can never be abrogated without establishing in its place another obligation, just as the directing of prayer toward Jerusalem has been abrogated, establishing in its place the Ka'ba." Every abrogated Text, he

[27]Ghazâlî, *al-Mustaṣfâ*, 1:120-121.

concludes, or rule of the *Sunna* of His Messenger is like this.[28]

Ghazâlî differs with this opinion, siding with a substantial number of other jurists—including the Mu'tazilite, Abû al-Husayn al-Basrî[29]—who require no substitution. He contends that this is rationally possible and that no desirable human benfit shall be voided. Even if there were a supposed benefit, the best interest would be in its abrogation. Moreover, substitution is not required of abrogation by any *Sharî'a* Text.

Human welfare and *Sharî'a* requirements aside, he cites the Qur'ân as proof for his position: "*Are you apprehensive before your [private] counsel [with the Prophet] to advance freewill offerings? Then do not do so. And perform the prayer, and pay the alms . . .*"[30] This indicates that the giving of charity as requirement before having private audience with the Prophet was abrogated without any substitute.[31]

Also, Ghazâlî holds that if the *Sharî'a* abrogates one rule by another, the abrogating rule may be less, equally, or more burdening than its predecessor. Thus, he is opposed to those claiming that such an abrogating rule must be less burdensome

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[28]al-Shâfi'î, *Risâla*, pp. 109-110.

[29]Abû al-Husayn al-Basrî, *al-Mu'tamad*, 2:1415-1416.

[30]Qur'ân, 58:13.

[31]The abrogated verse he refers to is the preceding one, Qur'ân, 58:12: "*O believers, when you have private counsel with the Messenger, before your counsel advance a freewill offering; that is better for you and purer. . . .*"

(*akhaff*) because God is merciful to His servants, and so He does not abrogate a rule except by what is easier than it. Their proof is the verse, "*God desires for you ease and does not desire for you hardship*."[32]

Ghazâlî counters that had this thinking been true, God would have laid no obligation at all on His servants; for certainly this is easier still! Nor would it be wise on His part to test man with sickness and difficulty. He goes on to explain the absurdities of adhering to this opinion, saying that were this true, the verse "*We will not abrogate a verse without bringing its better or equal*"[33] would not be possible, as substituting an abrogated verse with its equal contradicts this postion. '*Better*,' Ghazâlî concludes, refers to an obligation that provides greater reward for its doer and is more pleasing to God—not necessarily that which is easier for man.

He also brings examples of such abrogation from the Qur'ân in support of his position. God first ordered the Companions to refrain from battling the unbelievers. Next, he allowed them to fight. Finally, he obliged them to stand even twenty against two hundred of their enemies.[34] This, he argues, certainly graduates from easier to more severe. Also, in the prohibition against drinking alcohol, God first described it as being of little benefit and more harm. He

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[32]Qur'ân, 2:185.

[33]Qur'ân, 2:106.

[34]Qur'ân, 8:65. ". . . *If there be twenty of you, patient men, they will overcome two hundred; if there be a hundred of you, they will overcome a thousand unbeleivers. . . .*"

then prevented prayer for the intoxicated. Ultimately, He prohibited drinking outright. Here again this grades from ease to severity.[35]

CONCLUSION

It is apparent that Ghazâlî is overwhelmed by the notion that since the Lawgiver has the exclusive and unencroachable right to legislate, He has equal right to eliminate and abrogate. Consequently, he overstates the case for abrogation. His entire orientation is excessively argumentative, aimed at refuting opposing opinions instead of focusing on the principle of *naskh* and surveying the relevant texts so as to reflect their bearing on other *Sharî'a* sources.

Now, after articulating and analyzing Ghazâlî's views on the *Sharî'a* rules, their sources, and the governing principles of their abrogation, the question of the authenticity concerning Ghazâlî's works, particularly his legal ones, cannot be overlooked.

This is followed by an account of the *uṣûlî* literature between al-Shâfi'î and Ghazâlî and the emergence of the main approaches within the field of *uṣûl*, including a review of its most salient works. The study concludes with an examination of the organization and style of *al-Mustaṣfâ* and its impact.

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[35]Ghazâlî, *al-Mustaṣfâ*, 1:120

CHAPTER VII

MODERN STUDIES OF THE AUTHENTICITY OF GHAZĀLĪ'S WORKS

Literally hundreds of books, booklets, and epistles were falsely attributed to Ghazâlî after his death. This phenomenon was likely a result of two motivations. First, unknowns often found it irresistible to borrow on the prestige of a great figure in order to advance their ideas. Second, certain scholars sought to mask their identities in order to publish controversial opinions, perhaps more easily digested from the pen of a famous scholar. Hence, a near-legendary personality like Ghazâlî was bound to bear the abuse of an immense collection of forgeries.

Naturally, Muslim scholars were aware of this counterfeiting, for classical sources, beginning with his contemporary and colleague 'Abd al-Ghâfir al-Fârisî (451-529 H.),[1,2] made mention of

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[1]'Abd al-Ghâfir al-Fârisî's account of Ghazâlî is found in al-Subkî, *Ṯabaqât al-Shâfi'iyya*, 6:191-289. Also, see Dhahabî, *Siyar A'lâm al-Nubalâ'*, 19:322-346.

[2]'Abd al-Karîm al-'Uthmân, *Sîrat al-Ghazâlî wa Aqwâl al-Mutaqaddimîn fîhi*(Damascus: Dâr al-Fikr, n.d.), collected biographical information from the classical works and compiled them chronologically.

Ghazâlî's works, particularly the more prominent books. There are also scattered instances in the literature of one or another scholar endorsing or denouncing the authenticity of certain works appearing in his name.

However, the first modern systematic and critical evaluation of Ghazâlî's works began in the latter half of the nineteenth century with R. Gosche's "Über Ghazzâlîs Leben und Werke" (1858).[3] He discusses forty of Ghazâlî's books using the life of Ghazâlî as the acid test for their authenticity.

In 1899, D. B. MacDonald published "The Life of al-Ghazzâlî, with Especial Reference to His Religious Experiences and Opinions."[4] Seventeen years later, Ignaz Goldziher published his book, *Streitschrift des Gazâlî gegen die Bâṯinijja-Sekte*.[5] Goldziher's book included nearly a third of Ghazâlî's *Faḏâ'iḫ al-Bâṯinîyya* and an elaborate introduction that delved into the issue of authenticity regarding some of Ghazâlî's works.

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[3]This was published in *Philologische und Historische Abhandlungen der Königlichen Akademie der Wissenschaften zu Berlin*, 1858, pp. 239-311.

[4]*Journal of the American Oriental Society* 20 (1899): 71-132. MacDonald's article is useful, but, according to Montgomery Watt, it needs to be supplemented. *Encyclopaedia of Islam*, new ed., s. v. "Ghazâlî," by Montgomery Watt.

[5]First published in 1916. Later it was reprinted in Leiden: E. J. Brill, 1956.

W. H. T. Gairdner wrote in 1914 "Al-Ghazâlî's *Mishkât al-Anwâr* and the Ghazâlî-Problem,"[6] and later translated *Mishkât* with an introduction.[7] Also, according to Watt and Kojiro Nakamura, Gairdner wrote *An Account of Ghazâlî's life and Works* (Madras 1919).[8] Richard Gottheil, four years later, wrote his article "A supposed work of al-Ghazâlî."[9]

A more serious attempt to organize and classify Ghazâlî's books came in the form of Louis Massignon's 1929 work, *Recueil de Textes inedits Concernant l'Histore de la mystique en Pays d'Islam, reunis, classes, annotes et publies.* He divides Ghazâlî's life into four periods between 478 H. and the year of his death, 505 H., listing the works which Ghazâlî produced in each period. Massignon, however, does not provide much detail, especially with regard to the forgeries.[10]

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[6]*Der Islam* 5 (1914): 121-53 .

[7]*Al-Ghazzâlî's* Mishkât al-Anwâr *("The Niche for Lights"): A Translation with Introduction.* (London: Royal Asiatic Society, 1924; reprint ed., Lahore: Sh. Muhammad Ashraf, 1952).

[8]*Encyclopaedia of Islam*, new ed., s. v. "Ghazâlî," by Montgomery Watt; and Kojiro Nakamura, "A Bibliography on Imâm al-Ghazâlî," *Orient* 13 (1977): 124.

[9]*Journal of the American Oriental Society* 43 (1923): 85-91. He is referring to the work *al-Farq bayn al-Ṣâliḥ wa Ghayr al-Ṣâliḥ*. For more on the controversy of this work, see also Badawî, *Mu'allafât al-Ghazâlî*, p. 306.

[10]Louis Massignon, *Recueil de Textes inedits Concernant l'Histore de la mystique en Pays d'Islam* (Paris: Paul Geuthner, 1929), p. 93.

In 1924, Maurice Bouyges wrote *Essai de Chronologie des Ouevres de al-Ghazâlî* (*Algazel*). For unknown reasons Bouyges never published this work and it remained in his possession until his death in 1951. Later, Michel Allard edited and published the manuscript in 1959.[11] According to Watt, it is one of the more comprehensive works on the chronology and classification of Ghazâlî's books. Bouyges provided a fairly comprehensive list of Ghazâlî's works, investigating their chronology, identifying and commenting on the authenticity of each. Like Massignon, he divided Ghazâlî's life into periods, but made five such classifications between 465 H. and Ghazâlî's death. In his nine appendices he discussed the works attributed to Ghazâlî, arriving at a total of 383. Allard added a number of manuscripts which Brockelmann listed, upping that total to 404. He further refined the issue of authenticity by grading the attributed works as certain, doubtful, or false.

In 1934, Miguel Asín Palacios wrote *La Espiritualidad de Algazel y su Sentido Cristiano*. In the fourth volume of his study, Asín Palacios listed Ghazâlî's works and stated which he thought were authentic or forged.[12] In 1943, Carl Brockelmann's second edition of *Geschichte der Arabischen Litteratur* provided

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[11]Bouyges' work contains full references to the main biographical sources; see *Essai de Chronologie des Ouevres de al-Ghazâlî* (*Algazel*) (Beirut: Imprimerie Catholique, 1959), pp. 1-6.

[12]*La Espiritualidad*, 4 vols. (Madrid, 1934-41), 4:385-90.

remarkable information concerning Ghazâlî's works.[13] And in 1944, Margaret Smith published *al-Ghazâlî the Mystic*, which included a large biographical section on his works.[14]

Montgomery Watt, in 1949, wrote "A Forgery in al-Ghazâlî's *Mishkât*?"[15] But it is his 1952 article, "The Authenticity of the Works Attributed to al-Ghazâlî," which is considered a pioneering attempt at establishing criteria to measure the authenticity of the many works attributed to Ghazâlî.[16] He chose to test them against a number of Ghazâlî's major themes—such as prophethood being above and beyond reason and his views in defense of the *Sunna*—and for the logical schemes of organization which have become Ghazâlî's hallmark. Admitting that these criteria were not entirely conclusive, he proceeded to classify Ghazâlî's life into four major periods, listing in each books Ghazâlî is believed to have written.

Building on Watt's criteria, George Hourani wrote "The Chronology of Ghazâlî's Writings" in 1959.[17] He provided a chronological list of Ghazâlî's works mentioning their dates in

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[13] *Geschichte* (Leiden: E. J. Brill, 1943), pp. 535-546. See also the *Supplement bande* (Leiden: E. J. Brill, 1937), pp. 744-756.

[14] Published in London: Luzac, 1944.

[15] *Journal of the Royal Asiatic Society* (1949): 5-22.

[16] *Journal of the Royal Asiatic Society* (1952): 24-45.

[17] *Journal of the American Oriental Society* 79 (1959): 225-233.

relation to one another. Hourani did well to stress as a test for authenticity Ghazâlî's referral to his own works in his writings. Hourani published a revised version of this article in 1984.[18]

In 1961, 'Abd al-Karîm al-'Uthmân wrote *Sîrat al-Ghazâlî wa Aqwâl al-Mutaqaddimîn fîhi*. He wrote Ghazâlî's life and collected information from the classical sources related to Ghazâlî's biography. At the end of his book 'Uthmân lists his works.

Also in 1961 came 'Abd al-Raḫmân al-Badawî's book, *Mu'allafât al-Ghazâlî*,[19] where he attempted to exhaust all available references concerned with Ghazâlî's works and give references to their manuscripts in libraries throughout the world. He commented briefly on their contents and mentioned each work's various editions.[20] Badawî also classified Ghazâlî's works based on their authenticity. He developed seven general categories. According to him, 72 known works are genuinely Ghazâlî's; 22 are subject to doubt; between 96 and 127 books, mainly dealing with black magic, were said to be most likely forged; and between 303 and 352 he lists as portions of Ghazâlî's works that have been

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[18]"A Revised Chronology of Ghazâlî's Writings," *Journal of the American Oriental Society* 104 (1984): 289-302.

[19]The 2nd ed. was published (Kuwait: Wakâlat al-Maṭbu'ât, 1977.)

[20]Badawî did not make references to *al-Mankhûl* or *Shifâ' al-Ghalîl* in their published forms. However, Badawî's work deserves attention. Hourani's article also did not mention their published forms. Even his updated 1984 article suffered the same lapse.

circulated either as separate books or under different titles. In the fifth category, he provides a list of 225-273 books which were definitely forged. The sixth category lists those whose have unknown status, while in the final category he catalogues a number of manuscripts that are attributed to Ghazâlî, providing the reader with an alphabetical list of all of Ghazâlî's works. Overall, Badawi's work is useful and remarkable, but is in need of updating.

In 1974 'Abd al-Amîr al-A'sam wrote *al-Ghazâlî the Philosopher* which included a list and summary of Ghazâlî's works, promising that he would soon provide an exhaustive catalogue of Ghazâlî's writings. A'sam has been working for the past twenty years on what he claims will be a complete bibliographic study, utilizing both classical and modern references. The result of his study is eagerly awaited.

Having consulted the modern references with regard to Ghazâlî's legal works—both on *usul* and *fiqh*—an account of these books is in order.

CHAPTER VIII

GHAZĀLĪ'S LEGAL WORKS

1. ***Al-Ta'lîqa fî Furû' al-Madhhab.*** This exposition on the details of Shâfi'ite *fiqh* seems to have been Ghazâlî's first legal work. It is said that as a young man he travelled to Jurjân to study with a presumably renowned *faqîh*, Abû Naṣr al-Ismâ'îlî.[1] Ghazâlî's writings and notes from his sessions with Ismâ'îlî apparently spawned *al-Ta'lîqa*. But this is problematic. For the story quoted in the literature has it that on the way back to Ṭûs, Ghazâlî's caravan was accosted by bandits, who confiscated, among other things, the young scholar's notes. He pleaded with the chief bandit to at least return his notebooks, from which he had planned to write *al-Ta'lîqa*, explaining that they contained books that he had travelled to hear, write, and learn. The chief mocked him saying, "How can you claim to have known its knowledge, while if we take it from you, you remain without knowledge?" Nevertheless, *al-Ta'lîqa* was returned to Ghazâlî, who later said, "For three years thereafter, I memorized all that I had in *al-Ta'lîqa*."

But if this report is true, it means that *al-Ta'lîqa* is not a single, independent work, for he states clearly, "It contains *books*

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[1]Subkî, *Ṭabaqât al-Shâfi'iyya*, 4:103.

he travelled to hear, write, and learn." Furthermore, it says that Ghazâlî wrote *al-Ta'liqa* from the sessions with al-Ismâ'îlî—whose identity is to some degree dubious. Still, most references include *al-Ta'lîqa* as Ghazâlî's first legal work.

2. ***Al-Mankhûl min Ta'lîqât al-Uṣûl.***[2] While most scholars, like Subkî, place the writing of Ghazâlî's *Mankhûl* during the lifetime of his mentor, Imâm al-Ḥaramayn al-Juwaynî (d. 478/1085),[3] some have attributed the work to Ghazâlî's students after his seclusion and writing of *Iḥyâ' 'Ulûm al-Dîn, Kîmîyâ' al-Sa'âda*, and *Jawâhir al-Qur'ân*. Murtaḍa Zabîdî, in his commentary on *Iḥyâ'*, writes that in the introduction to *Mustaṣfâ* Ghazâlî mentions *al-Mankhûl* after these works saying,[4]

> Then divine guidance directed me to teach, and from my presentations and discussions in *'ilm uṣûl al-fiqh*, some students wrote a unique work which is different than *al-Tahdhîb al-Uṣûl*. When they completed it and submitted it to me [for review], I did not disappoint them. They called it *al-Mankhûl*.

Zabîdî's reference to *al-Mustaṣfâ* is odd. Either he had a copy of *al-Mustaṣfâ* in which this was written in its introduction—which

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[2]Hourani, in his article, "A Revised Chronology of Ghazâlî's Writing," *Journal of the American Oriental Society* 104 (1984): 291, gives the title as *al-Mankhûl fî Uṣûl al-Fiqh*. However, unaware of its publication, he still has it existing only in its manuscript form.

[3]Subkî, *Ṭabaqât al-Shâfi'iyya*, 6:225.

[4]See 'Uthmân, *Sîrat al-Ghazâlî*, p. 193.

is most unlikely—or he wrote it from memory and inaccurately quoted *al-Mustasfâ*; for both published editions and at least one manuscript are clearly different from what Zabîdî has cited. For Ghazâlî says in the introduction of *al-Mustasfâ*:

> Be that as it may, in the prime of my youth, this knowledge, which specially brings benefits of religion and worldly affairs, and the reward of the Hereafter and this life, consequently demanded from me that I devote to it quite a stretch from that respite of life and that I dedicate to it from the breathing space in life a measure. Hence, I wrote many books concerning the details of *fiqh* [Law] and its principles.
>
> Subsequently, I devoted myself to the knowledge of the path of the afterlife and the hidden secrets of the religion. I wrote extensive books concerning it, such as *Ihyâ' 'Ulûm al-dîn*; and concise [works], such as, *Jawâhir al-Qur'ân*; and also intermediate [works], such as, *Kîmîyâ' al-Sa'âda.*
>
> But Allâh's determination, تعالى, impelled me to return to teaching and benefiting students, a group of whom, who had acquired the science of *fiqh*, proposed to me that I should write a book on *usûl al-fiqh* [Principles of Law], wherein I proceed meticulously combining compilation and investigation, taking a middle road between insufficiency and boredom, composing it in a manner appealing to understanding—not as *Tahdhîb al-Usûl*, for it is too exhausting and lengthy, but more than *al-Mankhûl*, which tends to be too brief and concise. So I responded to their request, seeking Allâh's help and combined herein both compilation and investigation for understanding the meanings because one cannot dispense with the other.[5]

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[5]Ghazâlî, *al-Mustasfâ*, 1:4.

Therefore, Subkî's opinion concerning *al-Mankhûl* is more reliable and sustainable than Zabîdî's. This is further supported by Ghazâlî's statement at the end of *al-Mankhûl*, "I have followed what Imâm al-Haramayn, may Allâh have mercy on him, wrote without much alteration, addition, or omission."[6] Moreover, Ghazâlî himself made reference to *al-Mankhûl* in more than one of his works.[7]

However, Carl Brockelmann opines that it is possible that one of Ghazâlî's students compiled the book based on the lessons that Ghazâlî presented. But he does not provide any evidence. It is possible that Brockelmann based his observation on b. Hajar al-Haytami's (d. 973/1565) discussion in *al-Khayrât al-Hisân fî Manâqib al-Nu'mân*,[8] which states:

> Some of the fanatics who were not blessed with divine guidance brought me a book attributed to Imâm Ghazâlî which contains extreme prejudice and obscene mockery of Imâm al-Muslimîn and the first of the *mujtahid* imâms, namely Abû Hanîfah, may Allâh have mercy upon him. . . .
> A man brought this [book] assuming that Ghazâlî is the same as *al-Imâm* Muhammad, *the Proof of Islam*, while he is not the same person; for we find in his book *Ihyâ'* praise for Abû Hanîfa, where he wrote his biography in an honorable manner. . . . The copy that I saw of this book states on the cover that it is compiled by Mahmûd al-Ghazâlî. And this Ghazâlî is not the *Proof of Islam*. So I wrote on the margin of

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[6]Ed. Muhammad H. Hîtû (Beirut: Dār al-Fikr, n.d.), p. 504.

[7]Ghazâlî, *Shifâ' al-Ghalîl* (Baghdad: Irshad Press, 1971), pp. 8,16, and 267; and *al-Mustasfâ*, 1:4.

[8](Cairo: Maymaniyya Press, 1311 H), p. 4.

that book, 'This is a Mu'tazilite. His name is Maḫmûd al-Ghazâlî, and he is not the *Proof of Islam.*'

Although b. Ḫajar does not explicitly mention the name of *al-Mankhûl*, it is the only book where Ghazâlî towards the end—following his teacher, Juwaynî—attacked Abû Ḫanîfa, accusing him of not knowing Arabic, *ḫadîth*, or even *fiqh*.[9] (But he also defends Abû Ḫanîfa and criticizes Mâlik for excessive application of *maṣlaḫa* and giving preference to the practice of the Medinite community.)[10] Yet all of this takes place in a few lines. He further accuses Abû Ḫanîfa of turning the *Sharî'a* upside down, upsetting its structure.[11] In addition, according to Ibn Abî al-Wafâ' al-Qurashî,[12] there is a Ḫanafite answer to Ghazâlî's criticism of Abû Ḫanîfa in *al-Mankhûl* by Muḫammad b. 'Abd al-Sattâr b. Muḫammad al-'Imâdî al-Kardarî of Bukhârâ (d. 642/1244).[13]

Al-Mankhûl has been published, for the second time, by Muḫammad Ḫassan Hîtû in 1980, with a brief introduction.[14]

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[9]Ghazâlî, *al-Mankhûl*, p. 471.

[10]Ghazâlî, *al-Mankhûl*, p. 500.

[11]Ghazâlî continues his assault on Abû Ḫanîfa in *al-Mankhûl* until p. 504.

[12]*Al-Jawâhir al-Muḏiyya fî Ṯabaqât al-Ḫanafiyya* (Cairo: 'Isa al-Bâbî al-Halabî, n.d.), 2:82-83.

[13]There is a manuscript reference to Kadirî's answer to Ghazâlî available in Princeton, Garrett collection vol 2, 039, written in1002/1593. Badawî, *Mu'allafât al-Ghazâlî*, p.16.

[14](Damascus: Dâr al-Fikr Press.)

According to Badawî, there are at least nine different manuscripts in Egypt, Turkey, Iran, and India.[15] Hîtû published the book based on three Egyptian manuscripts.

In *al-Mankhûl*, Ghazâlî follows Juwaynî in defending the Shâfi'ite school and explaining its excellence over others. If it is true that he finished *al-Mankhûl* in the lifetime of his teacher, one can conclude that he wrote it before he was 28, since Juwaynî died in 478 H.[16]

It seems, however, that the tension between the Shâfi'ites and the Hanafites caused some of the Hanafites to complain to the Seljuk ruler, Sunger, stating that Ghazâlî attacked Abû Hanîfa and his *fiqhî* school. Ghazâlî himself refers to this incident. He says:[17]

> When I responded to the invitation to teach in Naysâbûr and students from all over the world came, envy erupted in the hearts of some people. One of them went to the king of Islam and took with him a book that I wrote when I was young, wherein they had forged statements against Abû Hanîfa. But a group of righteous people explained the situation to the Seljuki sultan and no harm was done to me.

Ghazâlî's statement as expressed in the *Fadâ'il* does not at all suggest that the part against Abû Hanîfa at the end of *al-Mankhûl*

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[15] Badawî, *Mu'allafât al-Ghazâlî*, p. 9.

[16] Subkî, *Tabaqât al-Shâfi'iyya*, 5:165-222.

[17] Nûr al-Dîn 'Alî, ed., *Fadâ'il al-Anâm min Rasâ'il Hujjat al-Islâm*, p. 45.

is forged, as 'Alî Muhî al-Dîn Dâghî claims.[18] Ghazâlî merely states that they added more words of their own. What supports the fact that the attack against Abû Hanîfa in *al-Mankhûl* is genuine is that the same materials are found in his teacher's book, *al-Burhân*.[19]

3. ***Al-Basît fî al-Furû' al-Madhhab.*** *Al-Basît*, Ghazâlî's third legal work, relies considerably on Juwaynî's great *Nihâyat al-Matlab fî Dirâyat al-Madhhab*,[20] of which a manuscript is available in Egypt.[21] *Al-Basît*, judging from Ghazâlî's description in his introduction to *al-Wasît* (which is an abridgement of the former), is an extensive treatise on Shâfi'ite law which also gives reference to the positions of the other major schools. Ghazâlî mentions *al-Basît*

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[18]See the introduction to al-Ghazâlî, *al-Wasît fî al-Madhhab*, 2. vols. ed. Muhî al-Dîn Dâghî (Cairo: Dâr al-I'tisâm, 1983), 1:161.

[19] Abû al-Ma'âlî 'Abd al-Malik al-Juwaynî, *al-Burhân fî Usûl al-Fiqh*, 2 vols. ed. 'Abd al-'Azim al-Dîb (Qatar: University of Qatar, 1980), 2:1363-1366.

[20]B. Khallikân, in *Wafayât al-A'yân*, 3:354, describes *al-Matlab* as a legal work without parallel in the history of Islam. See also al-Dhahabî, *Siyar A'lâm al-Nubalâ'*, 18:475. (Bouyges goes so far to say that it is a summary of *al-Matlab*. *Essai de Chronologie*, p. 12.)

[21]Badawî, *Mu'allafât al-Ghazâlî*, p.16.

[22]Ghazâlî, *Jawâhir al-Qur'ân*, ed. Muhî al-Dîn Sabrî al-Kurdî (Cairo: Kurdistan Press, 1911), p. 27.

in *Jawâhir al-Qur'ân.*[22] Dâghî, in his introduction to *al-Wasîṭ*, quotes Ghazâlî as saying of *al-Basîṭ*:[23]

> My book *al-Basîṭ fî al-Madhhab*, despite being organized well, having abundant of beneficial *fiqhî* information, unpolluted by irrelevant issues and wordiness, and contains the essential *fiqhî* issues, providing purely what is important and what is completely investigated, requires a high degree of determination and focused concentration to attain the knowledge [it imparts], which is rarely found. Due to the [prevailing] laxity and negligence that has overcome minds and hearts, I have conceded to the standards of students, . . . which may be boring. Yet I have extended it beyond too brief a presentation, which might be confusing.

There are at least four manuscripts of *al-Basîṭ* available in Spain, Turkey, and Egypt, making this elaborate work on Shâfi'ite *fiqh* prime for someone to bring out.[24]

4. *Al-Wasîṭ*. This work is highly regarded among the Shâfi'ites despite it being only half the size of *al-Basîṭ* and is, in fact, its summary. According to Ghazâlî, however, *al-Basîṭ* contains only seventy-percent of the substance of *al-Wasîṭ*.[25] Hence it is

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[22]Ghazâlî, *Jawâhir al-Qur'ân*, ed. Muḥî al-Dîn Ṣabrî al-Kurdî (Cairo: Kurdistan Press, 1911), p. 27.

[23]Ghazâlî, *al-Wasîṭ*, 1:205-206 and 1:295.

[24]Badawî, *Mu'allafât al-Ghazâlî*, p. 16.

[25]The first volume covers the "Book of Ritual Purity" and has six chapters.

free from the peripheral issues of *fiqh*, and has a different scheme of organization.[26]

Ghazâlî appears to have completed writing it before his departure from Baghdad, according to al-Subkî, who heard an instructor in Damascus saying, "Al-Ghazâlî says . . . ,"[27] which indicates that the text had gained widespread fame in Ghazâlî's lifetime.

A number of commentaries sprang from *al-Wasîṯ*, including *al-Muḫîṯ fî Sharḫ al-Wasîṯ*, written by Muḫammad b. Yaḫyâ b. al-Naysabûrî (d. 548/1153), a student of Ghazâlî's. He placed his manuscript in the S̲alâḫiyya school near the Mosque of al-Shâfi'î in Egypt.[28] Another commentary, *al-Maṯlab al-'Alî fî Sharḫ al-Wasîṯ al-Ghazâlî*, by Aḫmad b. Muḫammad b. al-Rif'a (d. 710/1310), was never completed. But twenty-six large volumes of the work are completed. Also there is *al-Baḫr al-Muḫîṯ fî Sharḫ al-Wasîṯ* by Aḫmad b. Muḫammad al-Qaymûlî (d. 727/1327). Qaymûlî abridged his own work and called it *Jawâhir al-Baḫr*. A summary of this abridgement, *Jawâhir al-Jawâhir*, has been completed by Sirâj al-Dîn 'Umar b. Muḫammad al-Yamânî (d. 878/1473).[29]

According to Ḫâjî Khalîfa, other commentators on *al-Wasîṯ*

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[26]Ghazâlî, *al-Wasîṯ*, 1:296.

[27]*Ṯabaqât al-Shâfi'iyya*, 6:199.

[28]Subkî, *Ṯabaqât al-Shâfi'iyya*, 9:30; and Ghazâlî, *al-Wasîṯ*, 1:252.

[29]Subkî, *Ṯabaqât al-Shâfi'iyya*, 9:30.

include Abû al-Futûh As'ad b. Mahmûd al-'Ijlî (d. 600/1203), Zâhir al-Dîn Ja'far b. Yahyâ al-Tarmantî (d. 682/1283), Muhammad b. 'Abd al-Hâkim, 'Izz al-Dîn 'Umar b. Ahmad al-Mudlijî (d. 710/1310), and 'Umar b. Ahmad al-Nasâ'î (d. 716/1316).[30]

Some other works that have been written critically, commenting on the views Ghazâlî posits in *al-Wasît*, are as follows: *Idâh al-Aghâlît al-Mawjûda fî al-Wasît* by Ibrâhîm b. 'Abd Allâh al-Hamadânî (d. 642/1244);[31] *Sharh Mushkil al-Wasît* by 'Uthmân b. 'Abd al-Rahmân b. al-Salâh (d. 643/1245);[32] and *Sharh Mushkil al-Wasît* by Abû al-'Ala' Hamza b. Yûsuf (d. 670/1271).[33]

In addition, many Shâfi'ite scholars have abridged *al-Wasît*, perhaps the best known of which is *al-Ghâyat al-Quswâ fî Dirâyat al-Fatwâ* by Nâsir al-Dîn 'Abd Allâh b. 'Umar al-Baydâwî (d. 685/1286).[34] Other abridgements were written by Nur al-Dîn

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[30]Khalîfa, *Kashf al-Zunûn*, 2:2007-2009.

[31]The book is still in manuscript form in Egypt, Dâr al-Kutb, number 282 of the Shâfi'ite *fiqh*. Ghazâlî, *al-Wasît*, 1:253; and Badawî, *Mu'allafât al-Ghazâlî*, p. 20.

[32]The book is still in manuscript form in Egypt.

[33]The book is still in manuscript form in Turkey and Egypt. Ghazâlî, *al-Wasît*, 1:254; and Badawî, *Mu'allafât al-Ghazâlî*, p. 20.

[34]This work was published in two vols. 1982 by Dar al-Islah and edited by 'Alî M. Dâghî.

Ibrâhîm al-Asnawî (d. 721/1321),[35] Ibrâhîm b. 'Abd al-Rahmân al-'Umayrî,[36] and Badr al-Dîn Muhammad al-Yamanî.[37]

There are eight known manuscripts of *al-Wasît* available in India, Spain, Turkey, Egypt, and Syria.[38] They do not constitute the entire work.

5. *Al-Wajîz*. Here Ghazâlî himself summarizes *al-Wasît*.[39] The book is of course a primary text for Shâfi'ites, reflecting Ghazâlî's tendency to bring into discussion the opinions of other schools.[40] Unlike his methods in *al-Wasît* and *al-Basît*, he uses symbols to refer to the names of Shâfi'ite scholars and the imâms of other schools, such as 'ح' for Abû Hanîfa, 'م' for Mâlik, 'ز' for al-

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[35]Ghazâlî, *al-Wasît*, 1:255; and Khalîfa, *Kashf al-Zunûn*, 2:2007.

[36]The book is in Turkey. Badawî, *Mu'allafât al-Ghazâlî*, p. 21; and Ghazâlî, *al-Wasît*, p. 256.

[37]The book is also in Turkey. See Badawî, *Mu'allafât al-Ghazâlî*, p.21; Ghazâlî, *al-Wasît*, 1:256.

[38]Badawî, *Mu'allafât al-Ghazâlî*, pp. 19-24.

[39]Ghazâlî makes mention of *al-Wajîz* in his *Jawâhir*, p. 27. Bouyges, in *Essai de Chronologie*, pp. 12 and 49, chronologically places *al-Wajîz* between *Ihyâ'* and *Jawâhir* based on a note on one Cairo manuscript giving the date 495/1101. Hourani and Badawi, however, reject this, mainly because of the mention of *al-Wajîz* in both *Ihyâ'* and *Jawâhir* itself.

[40]It has been printed in two volumes in 1317 H. by Mu'ayyad Press in Cairo.

Muzanî, and 'و' for a dubious or unlikely opinion of the Shâfi'ite school.

The book has been well received in Shâfi'ite circles. One of the most prominent Shâfi'ites after Ghazâlî, 'Abd al-Karîm Râfi'î (d. 623/1226), has written a commentary on *al-Wajîz* called *Fath al-'Azîz Sharh al-Wajîz*. Râfi'î, himself, abridged this commentary, calling it *Mukhtasar Fath al-'Azîz*.[41] Also, Zabîdî, in his book, *Ithâf al-Sâda al-Muttaqîn bi Sharh Ihyâ' 'Ulûm al-Dîn*, says that numerous scholars have worked on *al-Wajîz*. He claims that more than seventy commentaries were written on it.[42]

This work also has been abridged by a number of scholars, such as 'Umar b. 'Alî b. al-Mulaqqan's (d. 808/1401) *Khulâsat al-Badr al-Munîr fî Takhrîj al-Ahâdith wa al-Athâr al-Wâqi'a fî al-Sharh al-Kabîr*; b. Hajar al-'Asqilânî's (d. 852/1449) *al-Talkhîs al-Kabîr*;[43] and al-Nawawî's (d. 676/1177) *Rawdat al-Tâlibîn*.[44] Also, according to Badawî, more than eight commentaries have been written on *al-Wajîz* and its abridgements.[45]

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[41] According to Badawî it remains in Dar al-Kutb, Egypt. One volume is also in India. For details concerning the manuscripts, consult Badawî, *Mu'allafât al-Ghazâlî*, p. 27.

[42] Zabîdî, *Ithâf al-Sâda*, 1:43.

[43] This was printed in Delhi in 1307 H.

[44] This was also printed in 1307 H. in Delhi.

[45] Badawî, *Mu'allafât al-Ghazâlî*, p. 28.

6. ***Al-Mukhtasar fî al-Fiqh al-Shâfi'î.*** Ghazâlî has referred to this book in *Ihyâ'* and *Jawâhir al-Qur'ân,* and stated that it is the shortest of his *fiqhî* works. A manuscript of it is located in Turkey.[46]

7. ***Ma'âkhidh al-Khilâf.*** This is not a *fiqhî* book per se, for it does not deal with the details of Shâfi'ite *fiqh*. Rather it is concerned with the etiquette and protocol of *fiqhî* debates. He states in *Mi'yâr al-'Ilm,* "Since the determination of people in our time is directed more toward *fiqh* than the other sciences—in fact, is confined to it—I am compelled to compose a book on the rules of debate."[47] This motivation drove him to write, most probably, respectively, *Ma'âkhidh al-Khilâf, Lubâb al-Nazar, Tahsîn al-Ma'âkhidh,* and *al-Mabâdî' wa al-Ghayât,*[48] as well.

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[46]Ghazâlî, *Ihyâ' 'Ulûm al-Dîn,* 4 vols. (Beirut: Dâr al-Ma'rifa, n.d.), 1:35; and Ghazâlî, *Jawâhir,* p. 22. Hourani and Badawî give it with the title of *Khulâsat al-Mukhtasar wa Naqâwat al-Mu'tasar.* See Badawî, *Mu'allafât al-Ghazâlî,* p. 31; and Ghazâlî, *al-Wasît,* p.207.

[47]Ghazâlî, *Mi'yâr al-'Ilm* (Cairo: n.p.,1927), p. 27.

[48]These works are listed in Badawî, *Mu'allafât al-Ghazâlî,* pp. 33-36. Badawî claims that *al-Mabâdî' wa al-Ghayât* is concerned with *usûl al-fiqh* and not the rules of conduct for debates. However none of the past four books is found. So one cannot decisively determine its contents. See also Dâghî's introduction to Ghazâlî, *Wasît,* p. 209.

8. ***Shifâ' al-Ghalîl fî Bayân al-Shabah wa al-Mukhîl wa Masâlik al-Ta'lîl.*** This is Ghazâlî's first original work on *uṣûl al-fiqh.*[49] *Shifâ'* has an introduction and five essential parts. In the introduction Ghazâlî defines *qiyâs*, *'illa*, and *dalâla*, and differentiates between them.

Part One discusses the causes of the *Sharî'a* rules and the validity of extending those rules whenever similar causes or circumstances arise, which is based on the Book, the *Sunna*, and *Ijmâ'*.

Ghazâlî examines *maṣlaḥa* in relation to *'illa* in Part Two and discusses cases where two causes may exist for one rule. He illustrates this discourse, as well as the entire book, with many *fiqhî* examples, unlike *al-Mustaṣfâ.*[50]

In the third part he takes up the *Sharî'a* rule which is the basis for *qiyâs*, explaining what is within and outside its domain. Here he takes issue with Abû Zayd al-Dabbûsî, the great Ḥanafite scholar from Transoxiana.

In Part Four, Ghazâlî focuses on the *Sharî'a* rule, which is the basis of *qiyâs*, and its conditions. In the fifth part, *far'* (derived

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[49]The book has been edited by Ḥamad al-Kubaysî as part of his Ph.D. dissertation at al-Azhar in the Faculty of Sharî'a, June 8,1969. However, Hourani, unaware of al-Kubaysî's work, reports that the book is still in manuscript form. Hourani gives the title as *Shifâ' al-Ghalîl fî al-Qiyâs wa al-Ta'lîl.*

[50]Check al-Kubaysî's references to Ghazâlî's discussions of *fiqh* in *Shifâ' al-Ghalîl*, ed. Ḥamad al-Kabaysî (Baghdad: Maṭaba'at al-Irshâd, 1390/1971), pp. 710-720. Ghazâlî refers to *Shifâ'* in *al-Mustaṣfâ*, p. 2:290, 2:299, and 2:342.

rule) is examined, and is its conditions and its relationship to the ground *ḥukm* (rule).

We find Ghazâlî in *Shifâ'*, as in *al-Mustaṣfâ*, using the stylistic techniques of debate and relying heavily on logical proofs. He poses issues, stating the positions of his disputants, usually introduced by the phrase "If it is said," and then unveils his response with "We shall say." He did not, however, speak about the validity and the place of *qiyâs* in *fiqh* as he did in *al-Mustaṣfâ* and more briefly in *al-Mankhûl*. He wrote *Shifâ'*, as he openly states in the beginning of the book, as a response to the Ḥanafite jurists from Transoxiana. Moreover, Ghazâlî comments in the text that students using the books of Abû Zayd al-Dabbûsî to argue concerning *qiyâs* was the primary reason why he wrote this book.[51] In fact, al-Dabbûsî is mentioned extensively by Ghazâlî in *Shifâ'*.[52]

Ghazâlî is also said to have a collection of *fatâwâ*.[53] According to b. al-'Imâd al-Ḥanbalî,[54] who listed Ghazâlî's works, the book includes one hundred and ninety questions, which are not arranged in any particular order. In any case, this does not seem unlikely.

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[51]Ghazâlî, *Shifâ' al-Ghalîl*, p. 9.

[52]We find mention of Dabbûsî in *Shifâ' al-Ghalîl* on pp. 9, 14, 142, 146, 177, 178, 179, 181, 183, 310, 317, 322, 333, 379, 414, 460, 465, 510, 513, 584, 604, 650, 652, and 695.

[53]Subkî, *Ṭabaqât al-Shâfi'iyya*, 4:116.

[54]Ibn al-'Imâd, *Shadharât al-Dhahab*, 4:12.

Ibn Khaldûn notes in his *Târîkh* that Yûsuf b. Tashifîn of Spain was unhappy with the response of local Muslim governors and sought a *fatwâ* to remove them from power.[55] He wrote to the scholars of Iraq and he received an answer from Ghazâlî among other prominent legists.

It should be noted here that Maurice Bouyges stresses that Ghazâlî's *Fatâwâ* came before 482 H., expressing disagreement with Goldziher's position that the *Fatâwâ* appeared in Ghazâlî's later years of teaching in the Nizamiyya school of Baghdad, just before 488 H. According to b. Khaldûn, Yûsuf Tashifîn moved to Spain in the year 486 H. Therefore, one is inclined to agree with Goldziher's assumption rather than Bouyges'. In any case, there exists one manuscript of this work in Damascus.

Ibn Khallikân, while treating the biography of Ghazâlî's colleague, al-Kiya al-Harrâsî, cites an important *fatwâ* from Ghazâlî's *Fatâwâ* that illustrates Ghazâlî's position against Shî'ism.[56] The ruling concerns a person who openly cursed Yazîd b. Mu'âwiya, as to whether Yazîd should be deemed *fâsiq* (unrighteous)—rendering it permissible for one to curse him—or whether Yazîd did not intend to kill Husayn, making it preferable to ask God's mercy for him. Ghazâlî's answer reflects the classical Sunni position. He states, in short, that it is not allowed at all to curse a Muslim, and whoever does so will be himself cursed. The

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[55]Ibn Khaldûn, *Târîkh*, 6:187.

[56]Ibn Khallikân, *Wafayât al-A'yân*, 1:13.

fatwâ's significance for our purposes is that it helps in determining the falsity of various works attributed to Ghazâlî that have a Shî'î spirit, such as *Sharh Jannat al-Asmâ'*, which is forged in the name of Ghazâlî.[57]

9. ***Ghâyat al-Ghawr fî Dirâyat al-Dawr.*** This is a small *fatwâ* that Ghazâlî wrote concerning a special form of divorce, known as the "vicious circle." It is also known as *Ghawr al-Dawr fî'l-Mas'ala al-Surîjiyya*, and Brockelmann calls it *Bayân Ghâyat al-Ghawr fî Masâ'il al-Dawr*, saying that Ghazâlî wrote it in 484 H. In summary, a man tells his wife, "When I tell you that you are divorced, [it is as if] divorced has been pronounced three times." The required three pronouncements occur simultaneously when the one is uttered. Therefore, one is contingent upon the other, whence the name, 'vicious circle.' Ghazâlî in his later years reversed an earlier position, and ruled that such divorce is valid.[58]

10. ***Tahdhîb al-Usûl.*** This is Ghazâlî's second *usûlî* work.[59] Judging from a comment in his introduction to *al-Mustasfâ*, it is an elaborate effort which Ghazâlî intended it to be exhaustive:[60]

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[57]Badawî, *Mu'allafât al-Ghazâlî*, pp. 377-381.

[58]Badawî, *Mu'allafât al-Ghazâlî*, pp 50-52 and pp. 207-209.

[59]Badawî, *Mu'allafât al-Ghazâlî*, p. 218.

[60]Ghazâlî, *Mustasfâ*, 1:4.

> But Allâh's determination, تَعَالَى, impelled me to return to teaching and benefitting students, a group of whom, who had acquired the science of *fiqh*, propsed to me that I should write a book on *u<u>s</u>ûl al-fiqh*, where I proceed to meticulously combine compilation and investigation, taking a middle road between insufficiency and being boring, composing it in a manner that appeals to the understanding—not as in *Tahdhîb al-U<u>s</u>ûl* [*Refining the Principles*], for it is too exhausting and lengthy, but more than *al-Mankhûl* [*The Sifted from the Science of the Principles*], which tends to be too brief and concise. So I responded to their request, seeking Allâh's help, joining herein both organization and precision to facilitate comprehension of its meanings, for one cannot dispense with the other.

Bouyges, however, hesitated to attribute a book by this name to Ghazâlî.

11. ***<u>H</u>aqîqat al-Qawlayn*** *Kitâb*. Ghazâlî's third *u<u>s</u>ûlî* contribution is a defense of Shâfi'î's methodology.[61]

12. ***Kitâb Asâs al-Qiyâs***. This *u<u>s</u>ûlî* work of Ghazâlî is also mentioned in *al-Musta<u>s</u>fâ*, but in the context of addressing the issue of applying *qiyâs* to language.[62]

13. ***Kitâb <u>H</u>aqîqat al-Qur'ân***. This is another *u<u>s</u>ûlî* work which Ghazâlî mentions in *al-Musta<u>s</u>fâ* during his discourse

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[61]Brockelmann, *Geschichte*, supplement 1:754. See also Badawî, *Mu'allafât al-Ghazâlî*, pp. 212-213.

[62]Ghazâlî, *Musta<u>s</u>fâ*, 1:38 and 2:238 and 325.

concerning whether *basmala* is part of the Qur'ân or not.[63] The book, however, has not been found.

14.*Ihyâ' 'Ulûm al-Dîn*. Although *Ihyâ'* is not considered a purely legal work, nonetheless, it is patterned on the order of a book of *fiqh* and conversant with a fair number of issues normally associated with Islamic Law, especially matters of human conduct. Moreover, the terminology of the *fuqahâ'* and something of their approach is apparent in the work.[64] Indeed, one wishing to reformulate Ghazâlî's theory of the secrets of the *Sharî'a* would do well to begin with his *Ihyâ'*.

15. ***Al-Mustasfâ min 'Ilm al-Usûl***. This, of course, is Ghazâlî's last legal work, which he finished writing on the 6th of *Muharram*, 503 H.[65] No one—either in the classical period or in the modern era—has ever doubted that Ghazâlî authored *al-Mustasfâ'*, the subject of this study, with its first two *Qutbs* translated.[66]

Al-Mustasfâ was first printed in 1324/1907 by the Amîrî Press of Bulâq, Egypt, edited by Muhammad al-Bilbaysî al-Husaynî.

[63]Ghazâlî, *Mustasfâ*, 1:67.

[64]Hava Lazarus-Yafeh, *Studies in al-Ghazzâlî*, (Jerusalem: The Magnes Press, The Hebrew University, 1975), pp. 377-381.

[65]B. Khallikân, *Wafayât al-A'yân*, 3:354; Subkî, *Tabaqât al-Shâfi'iyya*, 4:116; and Ibn al-'Imâd, *Shadharât al-Dhahab*, 4:13.

[66]Concerning its manuscripts, see Badawî, *Mu'allafât al-Ghazâlî*, pp. 216-218.

The first edition was sponsored by Faraj Allâh Zakî al-Kurdî who announced only that the published book is based on rare manuscripts without specifying any of them.[67] In any case, this edition is in two volumes and includes in print, along with *al-Mustasfâ*, another work, 'Abd al-'Alî Muhammad b. Nizâm al-Dîn al-Ansârî's *Fawâtih al-Rahamût*, which is a commentary on *Musallam al-Thubût fî Usûl al-Fiqh* by Shaykh Muhib al-Dîn b. 'Abd al-Shakûr. *Al-Mustasfâ* is printed on the top part of the pages, with the other work on the bottom. Based on this edition, which is the best one, the Tujâriyya Press, in 1356/1937, reprinted *al-Mustasfâ*, as 2 volumes bound into one. In 1971, under the assignment of the Jindî Book Store of Cairo, Shaykh Muhammad Mustafâ Abî al-'Ilâ, known as Hâmid, supervised another printed edition of the book. This edition, however, has numerous printing errors. The Amîrî edition has been reprinted by Maktabat al-Muthanna in Baghdâd, in 1970, and by Dâr Sâdir in Beirut, n.d. Both reprints are in two volumes.

There are no less than fifteen manuscripts of *al-Mustasfâ* located in Turkey, Egypt, Germany, and Iraq.[68]

As for this translation, I have relied on the Amîrî edition plus a microfilm copy of a manuscript from al-Fâtih in Turkey acquired

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[67]I suspect that they used Dâr al-Kutub's manuscripts.

[68]Badawî, *Mu'allafât al-Ghazâlî*, p. 217. I am presently collecting copies of the manuscripts with the hope that along with a complete English translation a new Arabic edition may be produced.

by the Institute of Arab Manuscripts in Cairo. (For more on *al-Mustaṣfâ*, see the section dealing with its organization and content in this introduction).[69]

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[69]Concerning its manuscripts, see Badawî, *Mu'allafât al-Ghazâlî*, pp. 216-218.

CHAPTER IX

USŪLĪ LITERATURE FROM AL-SHĀFI'Ī TO GHAZĀLĪ

In the first two Islamic centuries, dispute between the Hijâzî school of the *muhadditks* and the Kûfan proponents of *ra'y* continued to be characterized by details of *fiqh* without serious examination of the legal principles from which these views sprang.[1]

Al-Shâfi'î ushered in this new phase of legal inquiry with his historic *Risâla*, and broadened the scope of the discussion to include *Sunna* as an essential legal source independent of the Qur'ân in *Ikhtilâf al-Hadîth*, where he laid down criteria for the verification

[1]Schools of *fiqh* are classified by specialists according to the regions where they flourished. Some, however, trace the *ra'y* school of Iraq to the Hijâz, claiming that the Kûfan legists' roots are grounded in the persons of 'Umar b. al-Khattâb and 'Alî b. Abî Tâlib. Through b. Mas'ûd, his students, and their successors, emerged the great Abû Hanîfa. Indeed, they argue that during Abû Hanîfa's lifetime Mâlik, in Medina, endorsed *al-maslaha al-mursala*, which is based on *ra'y*. Furthermore, Hijâzî legists like Rabî'a (d. 136/753) and Hasan (known as Rabî'a al-Ra'y and Hasan al-Ra'y), also were, obviously, proponents of *ra'y*. Still, it is acceptable to classify these schools by region, and some scholars hold that it is preferable for the sake of accuracy. See Sezgin, *Geschichte*, 1:406; and Muhammad al-Hijwî, *al-Fikr al-Sâmî fî Târîkh al-Fiqh al-Islâmî* (Medina: al-Maktabat al 'Ilmiyya, 1977), 1:310.

of the Prophetic traditions.[2] Also, in his book *Ibtâl al-Istihsân* (*The Refutation of Juristic Preference*) he reaffirmed the absolute relationship between *naskh* and the life of the Prophet, concluding that *wahî* (revelation) provided the only possibility for abrogation. Thus, he castigated the Hanafites for advocating the on-going validity of *naskh*—which he deemed more an instrument of a jurist's 'personal preference' than an indicator of the *Sharî'a's* abrogation.

Yet even al-Shâfi'î treated the subject of *usûl* with extensive illustrations of the details of *fiqh*, although his style remained straightforward and clean of the philosophical terminology found in later writings.

By the end of the third century, however, the legal school bearing his name had evolved away from his simple methods, lacing the study of the principles of *fiqh* with the terminology of logic and obscuring it with the arguments of *kalâm*. (Ironically, al-Shâfi'î's style of utilizing case illustrations found expression in the rival legal tradition that came to carry the name of Abû Hanîfa, as well as with the Zâhirite legists.) This 'kalâmization' of *usûl al-fiqh* continued through the time of Ghazâlî.

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[2]See the lengthy introduction of Shaykh Ahmad Shâkir in his edition of *Risâla*; ed. Ahmad M. Shâkir (Cairo: Dâr al-Turâth, 1979). See also Muhammad Abû Zahra, *al-Imâm al-Shâfi'î*: (Cairo: Dâr al-Fikr al-'Arabî, 1948).

THIRD ISLAMIC CENTURY *UṢŪLĪ* LITERATURE

Much of the *uṣûlî* literature of the third century emerged primarily as a result of the debates and ideas stimulated by al-Shâfi'î's *Risâla*, particularly concerning *qiyâs*, *khabar al-wâḥid* (solitary reports), and *ijmâ'*. Ḥanafite jurists, such as 'Isâ b. Abân b. Ṣadaqa al-Ḥanafî, wrote in defense of these principles.[3] The Ẓâhirites, on the other hand, formed refutations of *qiyâs*, *taqlîd* (blind imitation), and the concept of the abrogation of *ḥadîth*. Dawûd al-Ẓâhirî, for one, took up al-Shâfi'î's position on the invalidity of juristic preference in his book *al-Uṣûl*, which strongly opposes *istiḥsân*.[4]

By the end of the third century, and certainly in the fourth, the more established *fiqhî* schools entered a new stage in which their respective *fiqhî* ideas and rules had become formalized and rigid. The schools also became somewhat distinguished from their founding personalities, although their names still served as the *madhhabs'* eponyms, as exemplified by the Ḥanafite, Mâlikite, Shâfi'ite, and Ḥanbalite schools. Thus, original and independent *ijtihâd* was limited, confining the jurist's intellectual activity to more or less fixed interpretations within the established positions of his school. The freedom that al-Shâfi'î himself enjoyed, for instance, in changing his *fiqhî* views formed in Iraq after moving to Egypt, or adopting new opinions altogether, was all but eliminated

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[3]Baghdâdî, *Târîkh Baghdâd*, 11:157.

[4]al-Subkî, *Ṭabaqât al-Shâfi'iyya*, 2:290.

for the Shâfi'ite legist of the second half of the third century.

Nevertheless, *uṣûl al-fiqh* took its place among the literature of the Islamic sciences in the third century. A compilation of the titles of that period's recorded *uṣûlî* works and their authors reflects the prevalent *uṣûlî* issues of the century. The legal affiliation of their authors (noted after each grouping of book entries below) indicates the contribution to *uṣûl* by the major *fiqhî* schools.

Third Century Uṣûlî Books and Their Authors

•*K. Ithbât al-Qiyâs*
•*K. Khabar al-Wâḥid*
•*K. Ijtihâd al-Ra'y*
'Isâ b. Abân b. Sadaqa al-Ḥanafî[5] (d. 221/835)
[Ḥanafite]

•*K. al-Nukat*
Ibrâhîm b. Siyâr al-Naẓẓâm[6] (d. 221/836)

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[5]Abû al-Faraj M. b. Isḥâq b. al-Nadîm, *al-Fihrist* (Beirut: Dâr al-Ma'rifa, 1978), p. 303; and A. Muṣṭafâ al-Marâghî, *al-Fatḥ al-Mubîn fî Ṭabaqât al-Uṣûliyyîn* (Cairo: Maṭba'at Ansâr al-Sunna al-Muḥammadiyya, 1947), 1:139-140.

[6]al-Marâghî, *al-Fatḥ al-Mubîn*, 1:141. It is said that al-Naẓẓâm argued in the work against the validity of *ijmâ'*.

•*Kitâb fî Uṣûl Fiqh Imâm Dâr al-Hijra*
Aṣbagh b. al-Faraj b. Sa'îd al-Miṣrî al-Mâlikî[7] (d. 225/840)
[Mâlikite]

•*Uṣûl al-Fiqh*
Muḥammad b. Samâ'a al-Tamîmî[8] (d. 233/847)
[Ḥanafite]

•*K. al-Nâsikh wa al-Mansûkh*
Abû Muḥammad al-Qâsim b. Ibrâhîm al-Ḥasanî al-'Alawî[9] (d. 246/860)
[Zaydite and Mu'tazilite]

•*K. al-Amr wa al-Nahi 'alâ Ma'na al-Shâfi'î*
Al-Muzanî Ibrâhîm b. Ismâ'îl al-Miṣrî[10] (d. 264/877)
[Shâfi'ite]

•*K. al-Ijmâ'*
•*K. Ibṭâl al-Taqlîd*
•*K. Ibṭâl al-Qiyâs*
•*K. Khabar al-Wâḥid*
•*K. al-Khabar al-Mûjib li al-'Ilm*

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[7]Muḥammad al-Makhlûf, *Shajarat al-Nûr al-Zakiyya fî Ṭabaqât al-Mâlikiyya* (n.p.: Dâr al-Fikr, n.d.), p. 66.

[8]Ibn al-Nadîm, *al-Fihrist*, p. 289; Sezgin, *Geschichte*, 1:435; and Baghdâdî, *Târîkh Baghdâd*, 5:341-343.

[9]Sezgin, *Geschichte*, 1:563.

[10]There are nine pages remaining of this work in Damascus, according to Sezgin, *Geschichte*, 1:493. See also b. al-Athîr, *al-Lubâb fî Tahdhîb al-Ansâb*, 3 vols. (Beirut: Dâr Ṣâdir, 1980), 3:205; and al-Marâghî, *al-Fatḥ al-Mubîn*, 1:156-158.

•*K. al-Hujja*
•*K. al-Khusûs wa al-'Umûm*
•*K. al-Mufassar wa al-Mujmal*
•*K. al-Usûl*

Dawûd b. 'Alî b. Dawûd b. Khalaf al-Asbahânî Abû Sulaymân al-Zâhirî[11] (d. 270/884)

•*K. Nâsikh al-Hadîth wa Mansûkhihi*

Abû Bakr Ahmad b. Muhammad al-Athram al-Baghdâdî[12] (d. 273/887)
[Hanbalite]

•*K. Nâsikh al-Qur'ân wa Mansûkhihi*

Abû Muhammad 'Abd Allâh b. Muslim b. Qutayba[13] (d. 276/889)
[Hanafite]

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[11]See b. al-Nadîm, *al-Fihrist*, p. 319; and Marâghî, *al-Fath al-Mubîn* , 1:159-161. Subkî quoted a short paragraph from *K. al-Usûl* indicating that Dawûd al-Zâhirî disallowed any ruling based on *qiyâs* and rejected *istihsân*. See Subkî, *Tabaqât al-Shâfi'iya*, 2:290.

Dawûd al-Zâhirî's father was a Hanafite, according to Sezgin, *Geschichte*, 1:521. But Dawûd grew up a Shâfi'ite in *fiqh* and later became an independent Zâhirite. His followers were in Iraq, Persia, and North Africa. B. Hazm revived his school. See 'Umar Rida Kahhâla, *Mu'jam al-Mu'allifîn: Tarâjim Musannafî al-Kutub al-'Arabiyya*, 15 vols. (Beirut: Maktaba al-Muthanna, 1957), 4:139.

[12]Only 22 pages of this work remain in Turkey, according to Sezgin, *Geschichte*, 1:509-510.

[13]See 'Abd al-Qâdir b. Badrân, *al-Madkhal ilâ Madhhab al-Imâm Ahmad b. Hanbal* (Damascus: Dâr Ihyâ' al-Turâth al-'Arabî, n.d),.p. 371. It is most likely that b. Qutayba is a Hanafite. However, further investigation of his *fiqhî* affiliation is needed to confirm this.

•*K. al-Wuṣûl ilâ Ma'rifat al-Uṣûl*
Muḫammad b. Dawûd b. 'Alî b. Khalaf[14] (d. 297/909)
[Ẕâhirite]

•*Tafsîr Ma'ânî al-Sunna wa al-Radd 'alâ man Za'ama annahu min Rasûl Allâh*
•*K. al-Qiyâs*
Al-Hâdî ilâ al-Ḫaqq[15] (d. 298/910)
[Zaydite]

It should be noted that many of the classical references, biographies, and works of *ṯabaqât* have cited several scholars who were known to have written on *uṣûl al-fiqh*, or were well known as *uṣûlî* teachers and debators, but without specifying their works by title or by content. For example, Abû Isḫâq Ibrâhîm al-Shirâzî cites Abû 'Alî al-Ḫusayn b. 'Alî al-Karâbîsî (d. 248/862) as having numerous works on *usûl al-fiqh* and the details of *fiqh* but did not specify his books.[16] Similarly, Ibn al-'Imâd al-Ḫanbalî states that Abû Isḫâq Ismâ'îl b. Isḫâq b. Zayd al-Azdî al-Mâlikî wrote on *uṣûl al-fiqh*.[17]

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[14]The son of Dawûd al-Ẕâhirî, the founder of the Ẕâhirite school. B. al-Nadîm, *al-Fihrist*, p. 319.

[15]Sezgin, *Geschichte*, 1:566.

[16]*al-Ṯabaqât al-Fuqahâ'*, ed. Iḫsân 'Abbas (Beirut: Dâr al-Râ'id al-'Arabî, 1981), p. 102.

[17]*Shadharât al-Dhahab fî Akhbâr man Dhahab*, 8 vols. (Beirut: Dâr al-Masîra, 1979), 2:178.

FOURTH CENTURY *UṢŪLĪ* LITERATURE

In the fourth Islamic century the writing of *uṣûlî* literature saw the Hanafites become particularly active in defense of their school, especially in responding to al-Shâfi'î's attack on juristic preference (*istiḥsân*), which the Hanafites employed. However, both these schools plus the Mâlikites offered writings that criticized the Zâhirites for their rejection of *qiyâs* (analogical reasoning) and restriction of *ijmâ'* to the generation of the Companions. Indeed, a number of works in this period were devoted to single issues, such as *naskh* (abrogation) and *ijtihâd*.

But in this century a new genre of *uṣûlî* writing emerged, that is, the compiling and defining of the science's terminology. For example, the Hanafite legist Abû al-Maḥâmid Badr al-Dîn Maḥmûd b. Zayd al-Lâmishî systematized the vocabulary of *uṣûl* in his book *Kashf al-Alfâẓ*.[18] The elaboration of this genre continued into the fifth century, perhaps to facilitate the legal debates between the proponents of the various schools of Law. In any case, a general standardization—or at least a general understanding—of the usages of terminology by these schools was being worked out.

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[18]Lâmishî's date of death is not known; however, it is known that he was a fourth century scholar. His book has been edited by Muḥammad Muṣṭafâ Shalabî and published in the first issue of the journal *Majallat al-Baḥth al-'ilmî wa al-Turâth al-Islâmî*, 1398h, Mecca, issued by Markaz al-Baḥth al-'Ilmî wa al-Turâth al-Islâmî; King 'Abdul 'Azîz University. For reference see pp. 245-267, where it is cited by Abû Sulaymân in *Târîkh al-Fikr al-Uṣûlî*, p. 159.

One can summarize the scope of the *uṣûlî* work and contributions of the second half of the third and most of the fourth century in the following points.

First, jurists examined the various intra- and inter-madhhabî positions for their validity on rational grounds—whether or not the verses or *ḥadîth* cited as proof were logically applicable to a given case—or on the basis of authenticity, i.e. whether a *ḥadîth's* authenticity was considered, abrogated, etc.

Second, they also exerted their efforts to discover the underlying reasoning (*'illa*) that led the founders of the *fiqhî* schools to their respective positions. These jurists were known as *'ulamâ' al-takhrîj*. Every school had an abundance of scholars engaged in the support of their *madhhab's fiqhî* positions. Often, two opposing positions within the same school were eloquently argued by each opinion's proponents. *Fiqhî* debates flourished in the courts of ministers and governors, especially in Iraq and Khurasân. Out of this atmosphere emerged many works on *'ilm al-khilâf*, the science of *fiqhî* dispute.[19]

From another point of view, the scope and focus of the period's juristic activity, whether in the form of debates or scholarship, clearly reveals the extent to which the gate of *ijtihâd* had closed.[20] However, Wael B. Hallaq claims that "in theory at

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[19]The debates were not restricted to *fiqh*; they were often extended to *kalâmî* issues as well.

[20]Muḥammad al-Khudarî, *Târîkh al-Tashrî' al-Islâmî*, 8th ed. (n.p.: Dâr al-Fikr, 1967), p. 274-292.

least there is certainly nothing to indicate that *ijtihâd* was put out of practice or abrogated" during the fourth and fifth Islamic centuries as it is commonly supposed.[21] To illustrate his position, he cites accounts of the qualifications of the *mujtahid* in the works of Abû al-H̲usayn al-Baṣrî, Abû Is̲h̲âq al-Shirâzî, and Ghazâlî, among others, implying that none of them ever explicitly stated that the gate of *ijtihâd* had been closed. What seems to lead Hallaq to this position is the absence in the available *uṣûlî* literature of a formal legal opinion (*fatwâ*) that independent juristic endeavor had ceased. But it nevertheless remains difficult to ignore the fact that original juridical thinking, as expressed by the term *ijtihâd*, had already begun its decline in practice by the fourth century. This is presented quite clearly, not only by modern scholars, but in the writings of the jurists of that time. One would think that a firsthand account more accurately reflects the *practical* realities of the *fiqhî* establishment's conditions than does an academic assessment of the situation based on isolated *theoretical* statements in the *uṣûlî* literature. A distinguished H̲anafite jurist of the fourth century, Abû Zayd al-Dabbûsî, whom we shall examine more closely in the next chapter, had this diagnosis of the deterioration of *ijtihâd* and the preponderance of blind allegiance (*taqlîd*) in the era:

Allâh, the Glorious and the Exalted, created man with a

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[21] Wael B. Hallaq, "Was the Gate of *Ijtihâd* Closed?" *The International Journal of Middle Eastern Studies* 16 (March, 1984): 5.

he was misled.

The milestone which points you Satan's way is blind imitation of authority in religion [*taqlîd*]. One scholar imitates another out of appreciation for the former's opinion. He follows his understanding [*fiqh*] and believes that following him is Godly conviction. Alas! The real motive is laziness, laziness because he cannot investigate. If he strives to investigate a question, he arrives at his predecessor's answers, and the ignorant see him and follow because they assume that he is a man of knowledge, a man of proofs.

At other times Satan seduces people into imitating ignorance to hasten them astray. They imitate their parents or their peers; or they worship stones and corrupt religions. And the evil of the *'ulamâ'* are the critical cause; they are the underlying reason because they imitate [rather than investigate], and they crave authority and position, all the while competing with inheriting the true *'ulamâ'*. They merely manifest what appeals to the masses and continue to raise doubts about the true followers of the *Sunna* until religion is uprooted.

Certainly *taqlîd* is the capital of ignorance. It arises out of the individual's ignorance of his own human worth. This ignorance fires his imitation of another who, like him, is without proof; this is the problem.

And then there are those whom Satan hastens astray, those who claim to be inspired and so follow their intuition without proof, thinking that the original nature of man is enlightened and guided. They forget that man is created with desires and possessions. They claim in fact the stations of the prophets, yet they worship their passions, deluded that their inspired hearts guide them. They worship their desires as the other imitators worship wooden gods. He who allows himself out of ignorance to be guided by passion and intuition raises himself falsely to a level that he does not deserve. He is exactly like one who loves his condition of worshipping a wooden god. The latter exalts his wooden god ignorantly, and the former exalts himself [by worshipping his passions] ignorantly. They are ignorant of their human worth. Both perish. There is not one who knows himself and his worth who can be harmed. Whoever wants to be fair to himself must base his life on the Book and the traditions, then thinking and proofs. Surely Allâh is the real guide.

> The good among the Companions and their Successors, and the virtuous thereafter, may Allâh be pleased with all of them, based their affairs on proofs. They first sought guidance from the Book, next the *Sunna*, and then from the sayings of those following the Prophet, provided that what they said was proven correct and honored by evidence. A man would accept 'Umar's opinion concerning a certain issue, and then disagree with 'Umar and agree with 'Alî on another issue. I should mention here that the companions of Abû Hanîfa at times agreed or disagreed with him depending upon their convictions and acceptance of the proofs.
>
> The *madhhab* [view] in our *Sharî'a* was never 'Umarite nor 'Alid; rather people identified themselves as being part of the community of the Messenger of Allâh. Certainly those were the people of the blessed centuries who were praised by the Prophet. They recognized and honored proofs before personalities, truthful proofs came before the *'ulamâ'* or before their very persons. But when God-consciousness [*taqwâ*] vanished during the fourth century, people became lazy in seeking out evidences and replaced true proofs by their *'ulamâ'*. They then allowed for those *'ulamâ'*, such that some became Hanafites, Mâlikites, or Shâfi'ites. They used men to justify proofs and saw themselves as righteous and their beliefs as right, so long as they were born within the domain of this or that *madhhab*. Each one followed his human source of knowledge until good traditions were replaced or substituted by innovations, until the truth evaporated in the midst of passion, desire, and intuition.[22]

The ethos of the *madhhabiyya* complex, then, was *taqlîd*, which effectively killed the creativity of would-be jurists. The mechanism for reviving *ijtihâd*, let alone sustaining it, was therefore paralyzed, and adapting the *Sharî'a* in a meaningful and relevant way was arrested. Even those who reached the level of

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[22]Abû Zayd al-Dabbûsî, *Taqwîm Usûl al-Fiqh wa Tahdîd Adillat al-Shar'*, as cited by Muhammad Sa'îd al-Bânî, *'Umdat al-Tahqîq* (Beirut: Maktabat al-Islâmî, 1981), p. 60.

independent judgement within their respective *madhhabs* were pressed for strict loyalty to the *madhhab* and the production of exclusively *madhhabî* works.[23]

It was this syndrome that prompted al-Dabbûsî to write *Ta'sîs al-Naẕar*, in the introduction of which are some very penetrating observations about the young jurists of his time.

> I saw the hardships facing students of *fiqh* in learning by heart the questions of the differences in Law. They labored to extract conclusions from problems of Law and to discover the real roots of the issues. But their inadequate understanding prevents them from seeing the issues' real origins, obscuring their language, which causes them to utter perversive statements when debating the issues.[24]

This same message has been implied in Ghazâlî's Exordium to *al-Mustaṣfâ*.

Thus, while granting that the concept of *ijtihâd* was sustained in the classical era through the writings of insightful jurists, one

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[23]The Ḫanbalite jurist and theologian Abû al-Wâfâ' 'Alî b. 'Aqîl, for example, was on the threshold of *ijtihâd* but was pressed by the Ḫanbalites to stay within the boundaries of the *madhhab*. In a debate with al-Kiyya al-Harrâsî, the latter told b. 'Aqîl, concerning some issue, that "this is not the position of your school." B. 'Aqîl replied, "Should I be like al-Jubbâ'î and others, not knowing anything," meaning to forsake original thought for the *madhhab*. "I have my own ijtihâd," he added. Also, upon attending sessions with Mu'tazilite teachers, some Ḫanbalites wished to kill b. 'Aqîl. Instead, he was forced to declare his repentance and sign a petition that he will not repeat the violation. See Dhahabî, *Siyar A'lâm al-Nubalâ'*., 19:445.

[24]Abû Zayd 'Ubayd Allâh al-Dabbûsî, *Ta'sîs al-Naẕar*, ed. Zakarîya 'Alî Yûsuf (Cairo: Imâm's Press, 1972), p. 23.

would have to answer "yes" to the question, "Was the gate of *ijtihâd* closed?"

In fact, the flourishing of *usûlî* literature in the fourth century might well be explained as a reaction compensating for the absence of original *ijtihâd*. To the jurist, *usûl al-fiqh*—a science that was not previously reflected in the works of even the founders of the *madhhabs*, with the exception of al-Shâfi'î—was a fresh field where both originality and loyalty to his *fiqhî* affiliation were possible. Thus, in *usûl al-fiqh* one found an outlet for creativity, but under the auspices of rigid *madhhab* loyalties. In addition, the *usûlî* principles became points of reference or governing criteria in the days' popular *fiqhî* debates.[25]

Fourth Century Usûlî Books and Their Authors

•*K. al-Ijtihâd*
Abû 'Alî Muhammad b. 'Abd al-Wahhâb al-Jubbâ'î[26] (d. 303/915) [Mu'tazilite]

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[25]Muhammad Abû Zahra, *Usûl al-Fiqh* (Cairo: Dâr al-Fikr al-'Arabî, n.d.), p. 17.

[26]This work was cited by Abû al-Husayn an Basrî, *al-Mu'tamad fî Usûl al-Fiqh*, 2 vols. ed. Muhammad Hamidullah (Damascus: Institut Français de Damas, 1965), p. 722. Also see Sezgin, *Geschichte*, 1:621-622.

•*K. al-Dhakhîra fî Uṣûl al-Fiqh*
Abû Bakr Aḥmad b. al-Ḥusayn b. Burhân al-Fârisî[27] (d. 305/917)
[Shâfi'ite]

•*K. al-Radd 'alâ b. Dawûd fî Ibṭal al-Qiyâs*
•*Risâlat al-Bayân 'an Uṣûl al-Aḥkâm*
Abû al-'Abbâs Aḥmad b. 'Umar b. Surayj[28] (d. 306/918)
[Shâfi'ite]

•*Uṣûl al-Fiqh*
B. 'Abd Allâh Muḥammad b. Muḥammad al-Ḥarithî al-Mufîd b. al-Mu'allim[29] (d. 314/1022)
[Shî'ite]

•*K. Ithbât al-Qiyâs*
•*K. Ijmâ' al-Ummah*

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[27]Hâjî Khalîfa, *Kashf al-Ẓunûn 'an Asâmî al-Kutub wa al-Funûn* (Damascus: Dâr al-Fikr, 1982), 1:825 and 2:1188; Abû Sulaymân, *Târîkh al-Fikr*, p.110. See also Subkî, *Ṭabaqât al-Shâfi'iyya*, 2:184; and Isnawî, *Ṭabaqât al-Shâfi'iyya*, 2:254.

[28]al-Shîrâzî, *al-Ṭabaqât al-Fuqahâ'*, p. 89-90; and Sezgin, *Geschichte*, 1:595. Al-Subkî had a copy of b. Surayj's epistle, *Risâlat al-Bayân 'an Uṣûl al-Aḥkâm;* it was about 15 pages or plates. In one of the classes held by b. Surayj, according to Subkî, he received a sealed letter from the jurists in the "land beyond the river Oxus," to brief them about the *fiqhî* prinicples of al-Shâfi'î, Mâlik, Sufyân al-Thawrî, Abû Ḥanîfa and his two companions, and Dawûd b. 'Alî al-Zâhirî. So b. Surayj wrote the epistle. Subkî, *Ṭabaqât al-Shâfi'iyya*, 3:456-457.

[29]Sezgin, *Geschichte*, 1:549-550.

Abû Bakr Ahmad b. Ibrâhîm b. al-Mundhir al-Naysâbûrî[30] (d. 318/930)
[Shâfi'ite]

•*K. Al-Ijtihâd*

Abû Hâshim 'Abd al-Salâm b. Muhammad al-Jubbâ'i[31] (d. 321/933)

•*K. Ithbât al-Qiyâs*
•*K. al-Khâss wa al-'Amm*

'Alî b. Ismâ'îl b. Ishâq Abû al-Hasan al-Ash'arî[32] (d. 324/935)
[Shafi'ite]

•*K. al-Bayân fî Dalâ'il al-A'lâm 'alâ Usûl al-Ahkâm*
•*K. al-Ijmâ'* or *K. al-Radd 'alâ man Ankara Ijmâ' Ahl al-Madîna*[33]
•*Sharh Risâlat al-Imâm al-Shâfi'î*

Abû Bakr Muhammad b. 'Abd Allâh al-Sayrafî[34] (d. 330/941)
[Shâfi'ite]

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[30]Sezgin, *Geschichte*, 1:495-496. Most likely *K. al-Ithbât* is not a theoretical work. Rather, it should contain many details of *fiqh* based on what we know on b. al-Mundhir's other works and contributions.

[31]See Marâghî, *al-Fath al-Mubîn*, 1:172-173; Baghdâdî, *Târîkh Baghdâd*, 11:55-56; and Muhammad A. Dhahabî, *Siyar A'lâm al-Nubalâ'*, 23 vols. (Beirut: Mu'assasa al-Risâla, 1982), 15:63-64.

[32]See Sezgin, *Geschichte*, 1:602-604; and Marâghî, *al-Fath al-Mubîn*, 1:174-176.

[33]According to al-Shîrâzî, *Tabaqât al-Fuqahâ'*, p. 166, Sayrafî's work on *ijmâ'* is cited as a reply against the *ijmâ'* of Medina. Most likely, the two titles given are of the same work.

[34]According to Subkî, *Tabaqât alShâfi'iyya*, 3:186, al-Sayrafî was most knowledgeable of *usûl al-fiqh* after al-Shâfi'î.

•*K. al-Ijmâ' wa al-Ikhtilâf*
•*K. al-Maqâlât fî Uṣûl al-Fiqh*
Abû 'Abd al-Raḥmân al-Shâfi'î (n.d.)[35]
[Shâfi'ite}

•*K. al-Luma'*
Abû al-Faraj 'Amr b. Muḥammad al-Laythî[36] (d. 331/942)
[Mâlikite]

•*K. al-Jadal fî Uṣûl al-Fiqh*
Abû Manṣûr Muḥammad b. Maḥmûd al-Mâturîdî[37] (d. 333/944)
[Ḥanafite]

•*Muṣannaf fî Uṣûl al-Fiqh*
Aḥmad b. Aḥmad al-Qaṣṣ[38] (d. 335/946)
[Shâfi'ite]

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[35] Although b. al-Nadîm does not mentions his date of death, he does place him after al-Sayrafî. *al-Fihrist*, p. 300.

[36] See al-Makhlûf, *Shajarat al-Nûr*, p. 79.

[37] 'Abd al-Ḥay al-Laknawî, *Kitâb al-Fawâ'id al-Bahiyya fî Ṭabaqât al-Ḥanafiyya* (Cairo: al-Jamâlî and al-Khanjî, 1906), p. 195; Sezgin, *Geschichte*, 1:604-606; 'Abd al-Qâdir al-Qurashî, *al-Jawâhir al-Muḍiyya fî Ṭabaqât al-Ḥanafiyya* (Cairo: 'Isâ al-Bâbî al-Halabî, n.d), 3:360-361 and 4:90.

[38] al-Subkî, *Ṭabaqât al-Shâfi'iyya*, 3:59-63.

•*K. Usûl al-Karkhî*

'Ubayd Allâh b. al-Husayn b. Dallâl b. Dalham al-Karkhî[39] (d. 340/952)
[Hanafite]

•*Al-Fusûl fî Ma'rifat al-Usûl*

Ibrâhîm b. Ahmad al-Marwazî Abû Ishâq[40] (d. 340/952)
[Shâfi'ite]

•*K. al-Hidâya fî Usûl al-Fiqh*

Muhammad b. Sa'îd b. Muhammad b. 'Abd Allâh[41] (d. 344/955)
[Shâfi'ite]

•*K. al-Qiyâs*
•*K. Usûl al-Fiqh*
•*K. Ma'âkhidh al-Usûl*

Bakr b. al-'Alâ' Muhammad b. Ziyâd al-Qushayrî[42] (d. 344/955)
[Mâlikite]

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[39]See Baghdâdî, *Târîkh Baghdâd*, 10:353-355; Sezgin, *Geschichte*, 1:444-445. According to Marâghî, *al-Fath al-Mubîn*, 1:186-187, Abû Hafs al-Nasafî has written a commentary on it.

[40]See Ibn al-'Imâd, *Shadharât al-Dhahab*, 2:355; and Marâghî, *al-Fath al-Mubîn*, 1:188.

[41]According to al-Subkî, his work was good and useful for the scholars of Khawarjism. *Tabaqât al-Shâfi'iyya*, 3:164-165. See also Marâghî, *al-Fath al-Mubîn*, 1:189-190.

[42]According to al-Makhlûf, *Shajarat al-Nûr*, p. 79, Qushayrî wrote one book in answer to al-Shâfi'î concerning the obligatoriness of saying "Peace and blessings of Allâh be upon him" (صلى الله عليه وسلم) after mentioning the name of the Prophet. See also Marâghî, *al-Fath al-Mubîn*, 1:191-192.

•*K. Nazm al-Adilla fî Usûl al-Milla*
Abû al-Hasan 'Alî b. al-Husayn b. 'Alî al-Mas'ûdî al-Mu'arrikh[43] (d. 346/957)
[Shâfi'ite]

•*Imkân Dalâl al-Mujtahid*
Abû al-Hasan 'Alî b. Sa'îd al-Rustughfânî[44] (d. 350/961)
[Hanifite]

•*K. al-Jâmi' fî al-Usûl*
•*K. al-Nâsikh wa al-Mansûkh fî al-Qur'ân*
Muhammad b. 'Abd Allâh al-Barda'î[45] (d. 351/962)
[Mu'tazilite]

•*Al-Idâh fî Nâsikh al-Qur'ân wa Mansûkhihî*
Abû Muhammad Makkî b. Abî Tâlib[46] (d. 355/965)
[Mâlikite]

•*Al-Usûl wa al-Furû'*

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[43]According to al-Mas'ûdî, *Murûj al-Dhahab wa Mu'âdin al-Jawhar*, 1:11, *K. Nazm* contains the prinicples of *fatwa* [authoritative opinion], rules, *qiyâs, ijtihâd, istihsân*, the questions of abrogation, *ijmâ', khâss, al-'âmm*, the actions of the Prophet, the rules of debates, etc. The book is edited by Charles Pellat. According to Subkî, *Tabaqât al-Shâfi'iyya*, 3:456-457, al-Mas'ûdî studied *usûl al-fiqh* under Abû al-'Abbâs b. Surayj.

[44]According to Sezgin, *Geschichte*, 1:606, Rustughfânî differed with his teacher al-Mâturîdî concerning the possibility of a *mujtahid* going astray.

[45]Ibn al-Nadîm, *al-Fihrist al-Nadîm*, p. 343; and Marâghî,*Fath al-Mubîn*, 1:195.

[46]al-Qâdî 'Iyâd, *Tartîb al-Madârik*, 3:737-738.

•Al-Ishrâf 'alâ al-Usûl
Abû Hâmid Ahmad b. Bishr b. al- Marwazî[47] (d. 362/973)
[Shâfi'ite]

•K. Ikhtilâf Usûl al-Madhâhib
Al-Qâdî Abû Hanîfah al-Nu'mân[48] (d. 363/974)
[Ismâ'îlite]

•K. Usûl al-Fiqh
•Sharh al-Risâla
Abû Bakr al-Qaffâl al-Shâshî[49] (d. 365/976)
[Shâfi'ite]

•Kitâb fî Usûl al-Fiqh
Abû al-Husayn Ahmad b. 'Abd Allâh b. Muhammad al-Tawâbîqî[50] (d. 368/979)
[Shâfi'ite and Mu'tazilite]

•K. al-Fusûl fî al-Usûl
Abû Bakr Ahmad b. 'Alî al-Razî al-Hanafî al-Jassâs[51] (d. 370/981)

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[47]al-Subkî, *Tabaqât al-Shâfi'iyya*, 3: 12. Also, according to Sezgin, *Geschichte*, 1:497, al-Marwazî was the teacher Abû Hayyân al-Tawhîdî who praised him.

[48]He was raised as a Mâlikite, then became an Ismâ'îlite and became one of their grand jurist. Sezgin, *Geschichte*, 1:575-578.

[49]According to Marâghî, *Fath al-Mubîn*, 1:201-202, al-Shâshî started out as a Mu'tazilite but was later influence by al-Ash'arî, who convinced him with his theological doctrine.

[50]al-Subkî, *Tabaqât al-Shâfi'iyya*, 3:17.

[51]Se Baghdâdî, *Târîkh Baghdâd*, 4:314-315; and Sezgin,

[Hanafite]

•*K. al-Fusûl fî al-Usûl*
Muhammad b. Khafîf al-Shirâzî[52] (d. 371/982)
[Shâfi'ite]

•*K. al-Usûl*
•*K. Ijmâ' Ahl al-Madîna*
Abû Bakr Muhammad b. 'Abd Allâh al-Abhurî[53] (d. 375/985)
[Mâlikite]

K. al-Nâsikh wa al-Mansûkh min al-Hadîth
'Umar b. Ahmad b. Shâhîn Abû Hafs[54] (385/995)
[Muhaddith]

•*Kitâb fî al-Qiyâs wa al-'Ilal*
•*Adab al-Muftî wa al-Mustaftî*
•*K. al-Shurût*
Abû al-Qâsim 'Abd al-Wâhid b. al-Husayn al-Saymarî[55] (d. 386/996)
[Shâfi'ite]

Geschichte, 1:444-445.

[52]al-Subkî, *Tabaqât al-Shâfi'iyya*, 3:149.

[53]Makhlûf, *Shajarat al-Nûr*, p. 91.

[54]B. Shâhîn Abû Hafs has no *fiqhî* affiliation. Al-Khatîb al-Baghdâdî, who studied with b. Shâhîn's son, cited b. Shâhîn saying, "[As for] my *madhhab*, I am only a follower of Muhammad." *Târîkh Baghdâd*, 11:267.

[55]al-Subkî, *Tabaqât al-Shâfi'iyya*, 3:339-342.

•*K. al-Nihrîr wa al-Munaqqir fî Usûl al-Fiqh*
•*K. al-Hudûd wa al-'Uqûd fî Usûl al-Fiqh*
Al-Mu'âfâ b. Zakariyyâ b. Yahyâ b. Humayd Abû al-Faraj al-Nahrawânî al-Qâdî[56] (d. 390/999)
[Follower of b. Jarîr al-Tabarî in *fiqh*]

•*K. al-Usûl 'alâ Madhhab al-Shâfi'î*
Abû Bakr Muhammad b. Ja'far b. al-Daqqâq[57] (d. 392/1001)
[Shâfi'îte]

•*K. Tahdhîb al-Nazar fî Usûl al-Fiqh*
Ismâ'îl b. Ahmad b. Ibrâhîm al-Ismâ'îlî[58] (d. 396/1005)
[Shâfi'ite]

•*Kitâb fî Usûl al-Fiqh*
•*Kitâb fî Ahkâm al-Qur'ân*
Abû Bakr Muhammad b. Ahmad b. Qawwâz[59] (Died approximately at the end of the fourth century)

•*K. al-Ta'lîqa fî al-Usûl*
•*Muqaddima fî Usûl al-Fiqh*

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[56] See Ibn al-Nadîm, *al-Fihrist*, p. 329; b. al-'Imâd, *Shadharât al-Dhahab*, 3:134; and Marâghî, *Fath al-Mubîn*, 1:211. The title of *al-Nihrîr* is not certain. According to Bayard Dodge, who translated and edited *al-Fihrist*, the title is not clear even in the manuscripts.

[57] Baghdâdî, *Târîkh Baghdâd*, 3:229-230; and Sezgin, *Geschichte*, 1:498.

[58] According to b. al-'Imâd, *Shadharât al-Dhahab*, 3:147, al-Ismâ'îlî was a prominent Shâfi'ite in Jurjân, and his book is said to be sizeable.

[59] Shirâzî, *Tabaqât al-Fuqahâ'*, p. 168.

Abû al-Hasan 'Alî b. al-Hasan b. al-Qassâr[60] (d. 398/1007) [Mâlikite]

•*K. Bayân Kashf al-Alfâz*
Abû al-Mahâmid Badr al-Dîn Mahmûd b. Zayd al-Lâmishî[61] (Died approximately at the end of the fourth century)
[Hanafite]

•*Kitâb fî Usûl al-Fiqh 'alâ Madhhab Mâlik*
Abû 'Abd Allâh Muhammad b. Ahmad b. Mujâhid al-Tâ'î al-Baghdâdî[62] (Died approximately at the end of the fourth century)
[Mâlikite]

We notice in the fourth century that al-Shâfi'î's *Risâla* continued to occupy the attention of many, as exemplified by the abundance of commentaries on *al-Risâla*, mostly by Shâfi'ites.

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[60]According to Sezgin, *Geschichte*, 1:481-482, Abû al-Hasan also wrote *'Uyun al-Adila fî Masâ'il al-Khilâf bayna Fuqahâ' al-Amsâr*. It is said it this book is among the best on *khilâf* of the *fuqahâ'*. Also see Baghdâdî, *Târîkh Baghdâd*, 12:41-42.

[61]This book is a dictionary of technical *usûlî* terms that, according to Lâmishî, is useful to "the judge, the *muftî*, the seeker of a question equally." The book has 128 definitions, not following any particular pattern of organization and has been edited by Muhammad Hasan Mustafa Shalabî, as stated in a note above. See Abû Sulaymân, *al-Fikr al-Usûlî*; and al-Qâsim b. 'Abd Allâh b. Qutlûbugha, *Tâj al-Tarâjim fî Tabaqât al-Hanafiyya* (Baghdâd: Maktab al-Muthanna, 1962), p. 71. Also, al-Qurashî (d. 775/1383), in *Jawâhir al-Mudiyya*, 3:437, stated that he had seen a copy of *al-Alfâz*.

[62]He was a student of Abû al-Hasan al-Ash'arî and one of al-Bâqillânî's teachers. See Makhlûf, *Shajarat al-Nûr*, p. 92; and Marâghî, *Fath al-Mubîn*, 1:213.

Aside from *Dalâ'il al-A'lâm* of Abû Bakr Muhammad b. 'Abd Allâh al-Sayrafî (d. 330/941), as mentioned above, these include Abû al-Walîd Ihsân b. Muhammad al-Naysâbûrî al-Qurashî (d. 349/960); al-Imâm Muhammad b. Ismâ'îl 'Alî al-Qaffâl al-Kabîr al-Shâshî (d. 365/975); and Abû Bakr Muhammad b. 'Abd Allâh al-Shaybânî al-Jawzaqî al-Naysâbûrî (d. 388/998).[63]

FIFTH CENTURY *USŪLĪ* LITERATURE

By the fifth century, with the gates of *ijtihâd* locked tight, the innovative energies of many jurists spilled over into the comparatively new and fertile field of *usûl*. Certainly the fifth century witnessed a gush of works of genius from all the primary schools of Law, including the Zahirites,[64] and both the Ash'arite and Mu'tazilite persuasions of theology. Al-Qâdî Abû Bakr al-Bâqillânî, an Ash'arite in theology, articulated the Mâlikite school of *fiqh*. The Shâfi'ites produced al-Qâdî 'Abd al-Jabbâr and Abû al-Husayn al-Basrî from the Mu'tazilites. Among the Hanbalites, there is Abû Ya'la al-Farrâ', a *muhaddith* categorized as a *salafî*, as well as his student, Abû al-Khattâb al-Klûdhânî.[65] Finally, of course, b. Hazm,

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[63]Khalîfa, *Kashf al-Zunûn*, 1:873. See also Sezgin, *Geschichte*, 1:487-490, for the various works and commentaries on *al-Risâla*.

[64]Certainly Ibn Hazm's *al-Ihkâm fî Usûl al-Ahkâm*, ed. Ahmad Muhammad Shâkir, 8 vols. (Cairo: Maktabat al-Khanjî, 1926-1928) is the most significant Zâhirite *usûlî* work.

[65]Abû Ya'la al-Farrâ', *al-'Udda fî Usûl al-Fiqh*, ed. Ahmad b. 'Alî al-Mubârakî, 3 vols. (Beirut: Mu'assasat al-Risâla, 1980); Abû al-Khattâb al-Klûthânî, *al-Tamhîd fî Usûl al-Fiqh*, ed. Mufîd Abû

who lived about the same time as Abû Ya'la, advanced the opinions of the Zâhirites.

Almost universally, these writers of *usûl* used Aristotelian logic in arguing their points, including the *salafî* Abû Ya'la, who employs this in his book *al-'Udda*. In addition, these works rely heavily on discussions of language and usage, just as they do on disputes in dogma. Thus, the topics of *ijmâ'*, *qiyâs*, and the technical usage of terminology found special treatment by a number of scholars who devoted whole works or extensive study to them.

In the final analysis, the writing of *usûl* reached its zenith in the fifth century both in structure and academic performance, with Ghazâlî's *al-Mustasfâ* its crowning achievement.[66]

Fifth Century Usûlî Books and Their Authors

•*K. Adab al-Jadal*
•*K. fî al-Radd 'alâ al-Mu'tazila wa Bayân 'Ajzihim*
Abû al-Hasan 'Alî b. Ahmad al-Suhaylî al-Isfrayînî[67] (d. approx. 400/1010)

'Amsha and Muhammad b. 'Alî b. Ibrâhîm, 4 vols. (Jeddah: Dâr al-Madanî, 1985).

[66]Though Ghazâlî actually finished writing *al-Mustasfâ* in the second year of the sixth century, his work belongs to that of the fifth century, where his life was lived and ideas worked out.

[67]al-Subkî, in *Tabaqât al-Shâfi'iyya*, 5: 246, states that he saw the two books written by Isfrayînî. *K. Adab al-Jadal*, he comments, has strange *usûlî* opinions. It is not clear from Subkî's statement

[Shâfi'ite]

•*Risâla fî Tazkiyat al-Shuhûd wa Tajrîhihim*
•*al-Munqidh min Shubah al-Ta'wîl*

'Alî b. Muhammd b. Khalaf al-Qayrawânî al-Qâbisî[68] (d. 403/1012)
[Mâlikite]

•*K. al-Taqrîb min Usûl al-Fiqh* [69]
•*K. al-Muqni' fî Usûl al-Fiqh*
•*K. Amâlî Ijmâ' ahl al-Madîna*

Al-Qâdî Abû Bakr Muhammad b. al-Tayyib al-Bâqillânî[70] (d. 403/1013)
[Mâlikite]

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whether this book was directed against the theological positions of the Mu'tazilites or their *usûlî* opinions or both. See also Marâghî, al-*Fath al-Mubîn*, 1:224.

[68]According to b. al-'Imâd, *Shadharât al-Dhahâb*, 3:168, al-Qâbisî wrote great books on *usûl al-fiqh* and *al-furû'*. See also Sezgin, *Geschichte*, 1:482-483; and Kahhâla, *Mu'jam al-Mu'allifîn*, 7:194-195.

[69]Abu Ya'la al-Farrâ', *al-'Umdah fî Usûl al-Fiqh*, p. 556, cited al-Bâqillânî's work with this title, *K. al-Taqrîb min Usûl al-Fiqh*. Also, Makhlûf, *Shajarat al-Nûr*, p. 92, called it *al-Ta'rîf wa al-Irshâd fî Usûl al-Fiqh*. Al-Marâghî, al-*Fath al-Mubîn*, 1:221-222, called *al-Taqrîb wa al-Irshâd fî Usûl al-Fiqh*. 'Abd al-Ra'ûf Makhlûf in his doctoral dissertation *al-Bâqillânî wa Kitâbuhu I'jâz al-Qur'ân*, p. 115-117, does not mention *al-Taqrîb* among Bâqillânî's works. See also al-Qâdî 'Iyâd, *Tartîb al-Madârik*, 3:601.

[70]It is surprising that Sezgin neglected to make any reference to al-Bâqillânî's legal works. *Geschichte*,1:608-610. Perhaps this is due to the fact that none of them is extant. Fortunately, al-Ghazâlî, in *al-Mankhûl* and in *al-Mustasfâ*, preserved many of al-Bâqillânî's *usûlî* opinions. Also al-Juwaynî disputed 41 legally related positions of al Bâqillânî throughout *al-Burhân*, 2:1446-48.

•*K. Uṣûl al-Fiqh*
Al-Ḥasan b. Ḥâmid b. 'Alî b. Marwân Abû 'Abd Allâh al-Baghdâdî[71] (d. 403/1013)
[Ḥanbalite]

•*K. al-Radd 'alâ Ahl al-Taqlîd wa al-Nifâq*
'Abd Allâh al-Mahdî[72] (d. 404/1013)
[Zaydite]

•*K. al-Ḥudûd fî al-Uṣûl*
Abû Bakr Muḥammad b. al-Ḥasan b. Furâk[73] (d. 406/1015)
[Ḥanafite]

•*K. Uṣûl al-Fiqh*
Aḥmad b. Muḥammad b. Aḥmad b. Abû Ḥâmid al-Isfarâyînî[74] (d. 406/1015)
[Shâfi'ite]

•*K. Uṣûl al-Fiqh*

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[71]Ibn al-'Imâd, in *Shadharât al-Dhahab*, 3:166, and 'Abd al-Raḥmân b. Muḥammad al-'Ulaymî, *al-Manhaj al-Aḥmad fî Tarâjim fî Aṣḥâb al-Imâm Aḥmad*, 2 vols. ed. Muḥammad Muḥî al-Dîn 'Abd al-Ḥamîd (Cairo: Madanî Press, 1963-1965), 2:82.

[72]al-Mahdî, in fact, is the fifth Zaydite Imâm. Sezgin, *Geschichte*, 1:569.

[73]His book was printed in Beirut, 1324 H. Sezgin, *Geschichte*, 1:610-611; and Marâghî, *al-Fatḥ al-Mubîn*, 1:226-227.

[74]Subkî, in *Ṭabaqât al-Shafi'iyya*, 4:68, stated he has seen this *usûlî* work. See also b. al-'Imâd, *Shadharât al-Dhahab*, 3:178. See Ibn al-Athîr, *al-Lubâb* , 1:55.

Muhammad b. Muhammad b. al-Nu'mân al-Shaykh al-Mufîd b. al-Mu'allim[75] (d. 413/1022)
[Shî'ite]

•*K. al-Ikhtilâf fî Usûl al-Fiqh*
•*K. al-'Umad*
•*K. Majmû' al-'Ahd*

Al-Qâdî 'Abd al-Jabbâr al-Hamadânî al-Asadabâdî[76] (d. 415/1024)
[Mu'tazilite and Shâfi'ite]

•*Ta'lîqa fî Usûl al-Fiqh*
•*Risâla fî Usûl al-Fiqh*

Abû Ishâq Ibrâhîm b. Muhammad b. Muhrâm al-Isfarâyînî[77] (d. 418/1027)
[Shâfi'ite]

•*K. al-Ifâda fî Usûl al-Fiqh*
•*K. al-Talkhîs fî Usûl al-Fiqh*
•*al-Adilla fî Masâ'il al-Khilâf*
•*al-Ishrâf 'alâ Masâ'il al-Khilâf*

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[75]Sezgin, *Geschichte*, 1:549-551.

[76]al-Subkî, *Tabaqât al-Shâfi'iyya*, 3:202; and Abû Sulaymân, *al-Fikr al-Usûlî*, p. 192. According to Sezgin, *Geschichte*, 1:624-626, one copy of *K. al-Ikhtilâf fî Usûl al-Fiqh* remains in the Vatican. Also, Abû al-Husayn al-Basrî cited this work in his book *al-Mu'tamad*, 1:7, 324, 436, 498, 510, 692, 749, 860, 922, and 987.

[77]See al-Subkî, *Tabaqât al-Shâfi'iyya*, 4:256; b. al-'Imâd, *Shadharât al-Dhahab*, 3:209, Abû Sulayman, *al-Fikr al-Usûlî*, p. 174; and Marâghî, al-*Fath al-Mubîn*, 1:228-229. See Ibn al-Athîr, *al-Lubâb* , 1:55.

'Abd al-Wahhâb b. 'Alî b. Na<u>s</u>r al-Badhdâdî al-Mâlikî[78] (d. 422/1031)

•*K. al-Mujzî fî U<u>s</u>ûl al-Fiqh*

Abû <u>T</u>âlib Ya<u>h</u>yâ b. al-<u>H</u>usayn b. Hârûn[79] (d. 424/1033) [Mu'tazilite]

•*K. al-Ta<u>hs</u>îl fî U<u>s</u>ûl al-Fiqh*
•*K. al-Fi<u>s</u>al fî U<u>s</u>ûl al-Fiqh*
• *al-Nâsikh wa al-Mansûkh*

Abû Man<u>s</u>ûr 'Abd al-Qâhir b. <u>T</u>âhir al-Baghdâdî[80] (d. 429/1038) [Shâfi'ite]

•*K. al-Wu<u>s</u>ûl ila Ma'rifat al-U<u>s</u>ûl*

A<u>h</u>mad b. Mu<u>h</u>ammad al-Mu'âfirî al-Qur<u>t</u>ubî[81] (d. 429/1038) [Mâlikite]

•*Taqwîm al-Adilla fî U<u>s</u>ûl al-Fiqh*
•*al-Anwâr fî U<u>s</u>ûl al-Fiqh*

Abû Zayd 'Abd Allâh b. 'Umar b. 'Isa al-Dabbûsî[82] (d. 430/1039)

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[78]Makhlûf, *Shajarat al-Nûr al-Zakiyya*, p. 103; and al-Marâghî, *al-Fat<u>h</u> al-Mubîn*,1:230-231.

[79]Abû Sulaymân, *al-Fikr al-U<u>s</u>ûlî*, p. 174.

[80]al-Subkî, *<u>T</u>abaqât al-Shâfi'iyya*, 5:140; and al-Marâghî, *al-Fat<u>h</u> al-Mubîn*,1:234. See also Abû Mansûr Baghdâdî, *K. U<u>s</u>ûl al-Dîn* (Beirut: Dâr al-Alfâq al-Jadîda, 1981), the introduction page 'jîm' and pp. 193-227.

[81]Makhlûf, *Shajarat al-Nûr*, p. 113. See also al-Marâghî, *al-Fat<u>h</u> al-Mubîn*, 1:232.

[82]See A<u>h</u>mad Zakî <u>H</u>ammâd's unpublished paper "*Abû Zayd*

[Hanafite]

•*K. al-Mu'tamad fî Usûl al-Fiqh*
•*K. Ziyâdat al-Mu'tamad*
•*K. al-Qiyâs al-Shar'î*
•*K. Sharh al-'Umad*

Abû al-Husayn Muhammad b. 'Alî b. al-Tayyib Abû Husayn al-Basrî[83] (d. 436/1044)
[Mu'tazilite]

•*Sharh al-Risâla*

'Abd Allâh b. Yûsuf Abû Muhammad al-Juwaynî[84] (d. 438/1046)
[Shâfi'ite]

•*Ahkâm fî Usûl al-Ahkâm*
•*Masâ'il min al-Usûl*
•*K. al-Nubadh fî Usûl al-Fiqh*
•*al-Nâsikh wa al-Mansûkh*

Abû Muhammad 'Alî b. Ahmad b. Hazm[85] (d. 456/1063)
[Zâhirite]

•*K. al-'Uddah fî Usûl al-Fiqh*
•*K. Mukhtasar al-'Uddah*

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al-Dabbûsî."

[83]See our treatment of his work *al-Mu'tamad* following in this introduction.

[84]He is the father of Imâm al-Haramayn al-Juwaynî. See Subkî, *Tabaqât al-Shâfi'iya*, 5:73; and Abû Sulaymân, *al-Fikr al-Usûlî*, p. 176.

[85]*Encyclopaedia of Islam*, new ed., s.v. "Ibn Hazm," by R. Arnaldez. See also al-Marâghî, *al-Fath al-Mubîn*, 1:243-244.

•K. al-'Umdah fî Usûl al-Fiqh
•al-Kifâya fî Usûl al-Fiqh
Muhammad b. al-Husayn b. Muhammad b. Khalaf al-Baghdâdî Abû Ya'lâ al-Farrâ'[86] (d. 458/1065)
[Hanbalite]

•K. al-Yanâbî' fî al-Usûl
Abû al-Qâsim Ahmad b. al-Husayn Bayhaqî[87] (d. 458/1065)
[Shâfi'ite]

•K. al-Faqîh wa al-Mutafaqqih [88]
•al-Dalâ'il wa al-Shawâhid 'alâ Sihhat al-'Amal bi Khabar al-Wâhid
Abû Bakr Ahmad b. 'Alî b. Thâbit al-Khatîb al-Baghdâdî[89] (d. 463/1070)
[Shâfi'ite]

•K. Ahkâm al-Fusûl fî Ahkâm al-Usûl
•K. al-Ishârah fî Usûl al-Fiqh
•K. al-Hudûd

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[86]For his biography see al-'Ulaymî, *al-Manhaj al-Ahmad*, 2:105-118. See also al-Marâghî, *al-Fath al-Mubîn*, 1:245-248; and Dhahabî, *Siyar A'lâm al-Nubalâ'*, 18:91.

[87]Khalîfa, *Kashf al-Zunûn*, 2:2051; and al-Marâghî, *al-Fath al-Mubîn*, 1:249-250.

[88]The book has been published, 2nd ed., ed. Ismâ'îl al-Ansârî, 2 vols. (Beirut: Dâr al-Kutub al-'Ilmiyya, 1980).

[89]For his biography, see Akram al-'Umarî, *Mawârid al-Khatîb al-Baghdâdî fî Tarîkh Baghdâd*, p. 77.

Sulaymân b. Khalaf b. Sa'd al-Qurṯubî Abû al-Walîd al-Bâjî[90] (d. 474/1081)
[Mâlikite]

•*K. Uṣûl al-Fiqh*

'Abd al-Wahhâb b. Aẖmad b. Jalaba al-Ḫarânî al-Khazzâz[91] (d. 476/1083)
[Ḫanbalite]

•*K. al-Luma' fî Uṣûl al-Fiqh*
•*K. al-Tabṣira fî Uṣûl al-Fiqh*

Abû Isẖâq Ibrâhîm b. 'Alî b. Yûsuf al-Fayrûzabâdî al-Shirâzî[92] (d. 476/1083)
[Shâfi'ite]

•*K. 'Uddah al-'Alim wa Ṯarîq al-Sâlim*
•*K. al-'Uddah fî Uṣûl al-Fiqh* or *al-'Umda*

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[90]Ibn al-'Imâd, *Shadharât al-Dhahab*, 3:344. Al-Bâjî's *al-Ḫudûd* has been edited by Nazîh Ḫammâd (Beirut: Zu'bî Press, 1973). It is devoted to *uṣûlî* terminology and defines 75 terms. See also al-Marâghî, *al-Fatẖ al-Mubîn*, 1:252-254; and Dhahabî, *Siyar A'lâm al-Nubalâ'*, 18:538-539.

[91]The book has been published in Egypt: Mutba'ât al-Sunna al-Muẖammadiyya Press (1953). See M. Dhahabî, *Siyar A'lâm al-Nubalâ'*, 18:560-561.

[92]al-Subkî, *Ṯabaqât al-Shâfi'iyya*, 4:215; Abû Bakr b. Qâḏî Shuhba al-Dimâshqî (d. 851/1448), *Ṯabaqât al-Shâfi'iyya*, 2 vols. ed. al-Ḫâfiẕ 'Abd al-'Alîm Khân (Hyderabad: Osmania Oriental Publications, 1979), 1: 251-254; and al-Marâghî, *al-Fatẖ al-Mubîn*, 1:255-257. See also the introduction to *al-Tabṣira*, ed. Muhammad Ḫasan Hîtû. (Damascus: Dâr al-Fikr, 1980); M. Dhahabî, *Siyar A'lâm al-Nubalâ'*, 18:452-453; and Iẖsân 'Abbâs' introduction to Shirâzî's *Ṯabaqât al-Fuqahâ.'*

Abû Nasr b. Muhammad b. 'Abd al-Wâhid al-Sabbâgh[93] (d. 477/1084)
[Shâfi'ite]

•*Al-Burhân fî Usûl al-Fiqh*
•*Al-Waraqât fî Usûl al-Fiqh*
•*Al-Tuhfa fî Usûl al-Fiqh*
Abû al-Ma'âlî 'Abd al-Malik b. 'Abd Allâh b. Yûsuf al-Juwaynî Imâm al-Haramayn[94] (d. 478/1085)
[Shâfi'ite]

•*K. al-Ghunyâ fî Usûl al-Fiqh*
'Abd al-Rahmân b. al-Ma'mûn al-Mutawallî al-Naysâbûrî[95] (d. 478/1085)
[Shâfi'ite]

•*Al-Fusûl fî 'Ilm al-Usûl*
'Alî b. Fadâl b. 'Alî b. Ghâlib al-Qayrawânî[96] (d. 479/1086)
[Mâlikite]

•*Kanz al-Wusûl ilā Ma'rifat al-Usûl*

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[93]al-Subkî, *Tabaqât al-Shâfi'iyya*, 5:123, and al-Marâghî, *al-Fath al-Mubîn*, 1:258-259. Al-Sabbâgh wrote an extended work about the *fiqhî* disputes between the Shâfi'ites and the Hanafites, *K. al-Khilâf bayna al-Hanafiyya wa al-Shâfi'iyya*. See also b. al-'Imâd, *Shadharât al-Dhahab*, 3:355.

[94]al-Subkî, *Tabaqât al-Shâfi'iyya*, 5:165. See the following outline on *al-Burhân* in this introduction. See also al-Marâghî, *al-Fath al-Mubîn*, 1:260-262.

[95]Ismâ'îl Muhammad Bâshâ, *Hadîyat al-'Ârifîn*, 2 vols. 2nd ed. (Tehrân: al-Maktaba al-Islâmiyya, 1975), 5:518.

[96]Bâshâ, *Hadiyyat al-'Ârifîn*, 5:693.

'Alî Muhammad b. Muhammad b. 'Abd al-Karîm b. Mûsa al-Pazdawî [al-Bazdawî][97] (d. 482/1089)
[Hanafite]

•*Usûl al-Fiqh* known as *Usûl al-Sarakhsî*
Muhammad b. Ahmad Abû Bakr Shams al-A'imma Sarakhsî[98] (d. 483/1090)
[Hanafite]

•*Al-Qawâti' fî Usûl al-Fiqh*
Abû al-Mudhaffar Mansûr b. Muhammad 'Abd al-Jabbâr al-Sam'ânî[99] (d. 489/1095)
[Shâfi'ite]

•*K. Sirr al-Nazr fî 'Ilmay al-Usûl wa al-Khilâf*
Ahmad b. Sulaymân b. Khalaf b. Sa'd al-Bâjî[100] (d. 493/1099)

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[97]al-Marâghî, *Fawâ'id al-Bahîya fî Tarâjam al-Hanafîya*, p. 124, and *al-Fath al-Mubîn*, 1:263. See also Dhahabî, *Siyar A'lâm al-Nubalâ'*, 18:602-603; and Bâshâ, *Hadiyyat al-'Arifîn*, 5:693.

[98]al-Marâghî, *al-Fath al-Mubîn*, 1:264-265; and Qurashî, *al-Jawâhir Mudiyya fî Tabaqât al-Hanafiyya*, 3:78-82.

[99]He was a prominent Hanafite figure, who after *hajj* (approximately in the 467 H.) switched *madhhabs* to become a Shâfi'î. Upon his return to Marv, he was no longer welcome for changing his *fiqhî* affiliation. From him descended generations of scholars, one of whom is al-Sam'ânî (the author of *al-Ansâb*). See b. al-'Imâd, *Shadharât al-Dhahab*, 3:39; al-Marâghî, *al-Fath al-Mubîn*, 1:266; and Subkî, *Tabaqât al-Shâfi'iyya*, 5:335-346.

[100]This is the son of Abû al-Walîd al-Bâjî (d. 474/1081). See al-Marâghî, *al-Fath al-Mubîn*, 1:271.

In summary, the abundance of the *uṣûlî* literature reflects the flowering of this science during the three centuries between al-Shâfi'î and al-Ghazâlî and the competition between the various schools of Law to participate in its development. It is evident that the Shâfi'ite and Mâlikite *uṣûlî* works were close in their approach and exceeded the number of the Ḥanafite *uṣûlî* works. The Ḥanbalites began their major contribution to the corpus of knowledge only in the fifth century with al-Qâḍî Abû Ya'lâ al-Farrâ'. However, his students, Abû al-Khaṭṭâb al-Klûdhânî (d. 510/1116) and Abû al-Wafâ' b. 'Aqîl (d. 513/1119), wrote two major works.[101] The principle activity of the Ẓâhirites, on the other hand, ceased after b. Ḥazm.

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[101] Abû al-Khaṭṭâb wrote *al-Tamhîd fî Uṣûl al-Fiqh*. Abû al-Wafâ' b. 'Aqîl wrote *al-Wâḍiḥ fî Uṣûl al-Fiqh*. Al-Marâghî, *al-Fatḥ al-Mubîn*, 2:9-11. Later Ḥanbalite authorities in the field, such as b. al-Jawzî, b. Quḍâma, b. Taymiyya, b. al-Qayyam, b. Rajab, wrote *uṣûlî* works.

CHAPTER X

THE SEMINAL *USŪLĪ* WORKS

Among the wealth of material in the science of *usûl*, four books of the *Mutakallimûn* approach and one of the early *Fuqahâ'* method are singled out as the best in the field, according to Ibn Khaldûn: al-Qâdî 'Abd al-Jabbâr's *al-'Umad*,[1] Abû al-Husayn al-Basrî's *al-Mu'tamad*, al-Juwaynî's *al-Burhân*, al-Ghazâlî's *al-Mustasfâ*, and the Hanafite Dabbûsî's *Taqwîm al-Adilla*. It is useful to outline each before introducing *al-Mustasfâ*, giving special attention to Dabbûsî and his seminal work, in light of the fact that Ghazâlî engages the Hanafite *usûlî* positions, particularly as represented by Dabbûsî, in *al-Mustasfâ* and *Shifâ'*.

AL-QĀDĪ 'ABD AL-JABBĀR'S *AL-MUGHNĪ*

Until recently, Mu'tazilite thought and their positions on theological and juridical issues remained largely represented in the works of their adversaries, especially the Ash'arites. But the efforts of modern researchers led to the discovery of several

[1]The book is also called *Kitâb al-'Ahd*. Sezgin holds that this work is also called *al-Ikhtilâf fî Usûl al-Fiqh*, and its manuscript is in the Vatican. *Geschichte*, 1:625. Also, Abû al-Husayn al-Basrî mentions the work in *K. al-Mu'tamad*, 2:7, 324, 437, 498, 510, 692, 749, 922, and 987.

important Mu'tazilite works, the most significant of which is that of al-Qâdî 'Abd al-Jabbâr Ahmad b. 'Abd al-Jabbâr al-Hamadhânî (d. 415/1025).[2] His book *al-Mughnî fî Abwâb al-'Adl wa al-Tawhîd* is the biggest encyclopedic work of its kind on the theology of the Mu'tazilites.[3] In 1951, a team of researchers from Dâr al-Kutub discovered an incomplete copy of *al-Mughnî* in Yemen, which was printed under the supervision of Tâha Husayn. While this edition does provide access to 'Abd al-Jabbâr's thinking, it is deficient; some volumes, as is the case with the seventeenth which we are about to outline, do not even have a table of contents or index.[4]

But since *Kitâb al-'Ahd*, which has been described by b. Khaldûn as one of the most important works on *usûl*, is not available, a glimpse of volume seventeen of 'Abd al-Jabbâr's *al-Mughnî* is useful, for the part titled *al-Shar'iyyât* has extensive

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[2]For more information see his extended biography in 'Abd al-Karîm al-'Uthmân's published dissertation *Qâdî al-Qudâh 'Abd Jabbâr al-Hamadhânî* (Beirut: Dâr al-'Arabiyya, 1967) and his other work *Nazarîyat al-Taklîf* (Beirut: Mu'assasat al-Risâla, 1971). See also *Encyclopaedia of Islam*, new ed. s.v., "'Abd al-Jabbâr b. Ahmad al-Asadâbâdî," by S. M. Stern. For his works and biographical references, see Sezgin, *Geschichte*, 1:624-626.

[3]He spent almost twenty years writing his extended work. See *al-Mughnî fî Abwâb al-Tawhîd wa al-'Adl*, 20 vols. (Cairo: The Egyptian Company for Authorship and Translation,1962), vol. 17: *al-Shar'iyyât.*, ed. Amîn al-Khûlî, 20:258. According to Sezgin, *Geschichte*, 1:624-625, 'Abd al-Jabbâr is generally considered among the last of the great Mu'tazilite thinkers.

[4]See the introduction to 'Abd al-Jabbâr's work *Mutashâbih al-Qur'ân*. 2 vols. ed. 'Adnân M. Zarzûr (Cairo: Dâr al-Turâth, 1969), 1:27. See the introduction to *al-Mughnî fî Abwâb al-Tawhîd wa al-*

discussion on a broad range of *uṣûlî* topics.[5] It reflects the strong connection between theological and juridical issues evident in all *uṣûlî* literature of the fifth century. However, 'Abd al-Jabbâr is unique in that he openly advocates this relationship.[6]

The major subjects in this volume are divided into fourteen parts which are themselves comprised of chapters. The first three parts tend to be in disarray since some materials are missing. However, of their remaining chapters, 'Abd al-Jabbâr begins with a discussion on language, namely expressions that indicate the *Sharî'a* intent. He continues with the general and specific moods of these expressions and concludes with a brief discourse on the *Sharî'a* address itself and how to understand it.

'Abd al-Jabbâr advances the linguistic treatise in part four with sections on *al-Bayân* (elucidation) and *al-Takhṣîṣ* (specification), treating them in five chapters.[7]

Part five finds him returning to the *Sharî'a* address as a whole, the way it imparts rules, and the types of revealed and 'rational' rules.[8]

'Adl, 20 vols. (Cairo: The Egyptian Company for Authorship and Translation,1962), vol. 14 edited by Muṣṭafâ al-Saqqâ, pp. *alif*-*yâ'*.

[5]Amîn al-Khûlî has edited the manuscript and introduced the volume with a brief introduction. The book has been printed in Cairo: Dâr al-Kutub, 1963.

[6]'Abd al-Jabbâr, *al-Mughnî*, 17:92.

[7]'Abd al-Jabbâr, *al-Mughnî*, 17:41-77.

[8]'Abd al-Jabbâr, *al-Mughnî*, 17:77-110.

In part six, al-Qâḏî 'Abd al-Jabbâr resumes his linguistic analyses, this time with a look at the imperative and prohibitive moods, explaining that the *Sharî'a* rules relate to the acts of the loci of obligation and are not directed to the physical beings of men themselves.[9] The discussion is furthered in part seven, where he takes up the *mubâḫ* (allowed) acts, their status and requirements, and prohibition.[10] He also examines the concepts of *sabab* (reason) and *'illa* (*ratio legis* or underlying cause).

Next, 'Abd al-Jabbâr devotes three chapters (in part seven) to *ijmâ'*, where he surveys its definition, occurrence, and authority.[11] He continues through chapters eight and nine to respond to the issue of whether *ijmâ'* can be based on *qiyâs* and *ijtihâd*, as well as the permissibility of transmitting *ijmâ'* through solitary report, and concludes with an inquiry into the conditions for establishing *ijmâ'*.

He begins part ten with an address on the authority of the Prophet's acts and their *Sharî'a* status, classifying them into canonical acts, others which one is not obliged to follow, and those that have been allowed only to the Prophet.

In parts eleven and twelve, he evaluates *qiyâs*, its validity as a *Sharî'a* source, and what constitutes or invalidates it.[12] He closes

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[9] 'Abd al-Jabbâr, *al-Mughnî*, 17:110-140.

[10] 'Abd al-Jabbâr, *al-Mughnî*, 17:140-173.

[11] 'Abd al-Jabbâr, *al-Mughnî*, 17:174-274.

[12] 'Abd al-Jabbâr, *al-Mughnî*, 17:275-387.

out the volume with a number of chapters on *ijtihâd* and a discourse on the permissibility of fulfilling religious obligations that have been transmitted via solitary report.

It is noteworthy that al-Qâḏî began his studies as an Ash'arite, but later defected to the Mu'tazilites.[13] This may explain his position that *kalâm*, the basis of dogma, is necessarily linked with *uṣûl*, the basis of *'amal* (conduct in compliance with the *Sharî'a* commands).[14] Therefore, he intertwines the discussion of *uṣûl* in *al-Mughnî* with both the issues and the style of *kalâm*, especially that of the Mu'tazilites. In any case, he was a Shâfi'ite in *fiqh*, though it did not prevent him from disagreeing with the school's founder on a number of issues.[15] Yet he is comparatively gentle in his opposition to al-Shâfi'î, as he is in his differences with the Shî'a, where he cites their opinions without severe critique.[16] It is possible, however, that he may have been 'wisely' circumspect regarding the legal views of the Shî'a, since the ruling Buwayhids, whom 'Abd al-Jabbâr lived under and served, were themselves Shî'a. Yet in his disagreement with the Mâlikites, as in regard to

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[13] Zarzûr's introduction to *al-Mutashâbih al-Qur'ân*, 1:13.

[14] 'Abd al-Jabbâr, *al-Mughnî*, 5:17.

[15] See 'Abd al-Jabbâr, *al-Mughnî*, 17:90, where he openly disagrees with al-Shâfi'î concerning the question of abrogating the Qur'ân on the basis of a *mutawâtir Sunna*.

[16] 'Abd al-Jabbâr, *al-Mughnî*, 17:213.

their opinion of restricting *ijmâ'* to the community of Medina, he was harsh to the point of being offensive.[17]

Still, one cannot make an absolute judgement about 'Abd al-Jabbâr's *uṣûlî* positions and approach based on *al-Mughnî* alone. Fortunately, however, one of his students devoted a good part of his scholarship to the writing of a commentary on al-Qâḍî's work *al-'Ahd,* and later wrote independently on the subject of *uṣûl,* leaving us another principle work on *uṣûl al-fiqh,* namely Abû al-Ḥusayn al-Baṣrî's *al-Mu'tamad.*

ABŪ AL-ḤUSAYN AL-BAṢRĪ'S *AL-MU'TAMAD*

While Ghazâlî's *Mustaṣfâ* is clearly a milestone in the development of *'ilm al-uṣûl,* the inclination to capsulize and set the subject free from other incidentally related issues had already surfaced several generations before him in Baṣra, the cradle of *i'tizâl.* Early in the fifth Islamic century, Abû al-Ḥusayn b. 'Alî al-Ṭayyib al-Baṣrî wrote one of the most important books of *uṣûl* in the classical period, *al-Mu'tamad fî Uṣûl al-Fiqh.*[18]

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[17] 'Abd al-Jabbâr, *al-Mughnî,* 17:214.

[18] A good edition of the *Mu'tamad,* based on five manuscripts located in Yemen and Turkey, has been published Muhammad Ḥamîdullah with Aḥmad Bakr and Ḥassan Ḥanafî; 2:1066, (Beirut, Institut Français de Damas, 1964-5). Appended to the book are two works attributed to the author, *Kitâb Ziyâdat al-Mu'tamad* and *Kitâb al-Qiyâs al-Shar'î.*

Abû al-Husayn's life (d. 436/1044), unfortunately, is not well chronicled.[19] He was trained in the traditional Muslim sciences, particularly in *kalâm* and *fiqh*, and cultivated a personal interest in philosophy and the natural sciences. In fact, he, along with one of his teachers, 'Alî b. Asbagh b. al-Samh (d. 426/1035), is said to have written a commentary on some of Aristotle's work in physics, as translated by Ishâq b. Hunayn.[20] Noted as both a capable intellectual and prolific writer, he apparently stepped away from mainstream Mu'tazilite thought, repudiating some of its concepts as well as their proponents. Hence, he earned blame in staunchly Mu'tazilite circles as being tainted by Greek philosophy and a critic of school notables.[21]

It is evident from Abû al-Husayn al-Basrî's introduction to *al-Mu'tamad* that, after his explication of 'Abd al-Jabbâr's prominent work on *usûl, Kitâb al-'Ahd* (also referred to *K. al-'Umad*), which he described as "repetitious," he thought it justified to restructure and refine the study of *usûl*.[22] He faulted 'Abd al-Jabbâr for

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[19]Sezgin, *Geschichte*,1:427; and Abû Sulaymân, *al-Fikr al-Usûlî*, p.224.

[20]'Abd al-Rahmân Badawî, *Aristû 'ind al-'Arab;* 2nd ed. 2 vols. (Kuwait: Wakâlat al-Matbû'ât, n.d.), 2:293-294.

[21]Abû Sulaymân, *al-Fikr al-Usûlî*, p. 225.

[22]al-Basrî, *Mu'tamad*, 1:7. Also, note that Ibn Khaldûn, *Muqaddimah*, 1:576, mistakes *al-Mu'tamad* to be a commentary on 'Abd al-Jabbâr, *al-'Umad*, whereas Abû al-Husayn states clearly in his introduction to *al-Mu'tamad* that he wrote it after completing his commentary on *al-'Umad*.

clouding the science's issues with tedious and irrelevant *kalâmî* arguments that bore the specialist and bewilder the novice.[23] In addition, he claims to have developed views not handled by his teacher.[24]

Abû al-Husayn al-Basrî, like Ghazâlî, provides his reader with an introductory outline that highlights the salient *usûlî* issues and maps out relationships between key concepts to ease comprehension. Although *al-Mustasfâ* emerges the more concise and coherent text, perhaps owing to Ghazâlî's deep association with philosophy, Abû al-Husayn al-Basrî preceded him in tailoring the topic to suit the needs of living students rather than the standards of dead masters. Nor is there reason to believe that this went unnoticed by Ghazâlî himself, and that this, to some degree, is not reflected in *al-Mustasfâ's* introductory assessment of the science's status and Ghazâlî's impulse to reorganize the presentation of *usûl* explicitly to enhance understanding.[25] Ghazâlî, however, went beyond Abû al-Husayn's cleansing of *usûl* from *kalâm*, purging it of excessive discussions and illustrations on language and even *fiqh*, albeit without consistency.

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[23]al-Basrî, *Mu'tamad*, 1:7. In his introduction he cites examples of these *kalâmî* discussions, such as the classification of the types of knowledge, the definition of necessary knowledge, and the emergence of knowledge from discursive thinking.

[24]Unfortunately, since 'Abd al-Jabbâr's *Kitâb al-'Umad* has not been located, one cannot examine his claim.

[25]Ghazâlî, *al-Mustasfâ*, 1:4-5.

According to Abû al-Husayn al-Basrî, extracting *fiqhî* rules from their sources is dependent first and foremost on understanding the language of the *Sharî'a*. Therefore, *al-Mu'tamad* opens with an elaborate discourse on the essence of speech and its classification, where literal and figurative usage and its applications—in general and in the technical vocabulary of the *Sharî'a*—are the subjects of several early chapters.[26] *Usûl al-fiqh*, he argues, is the means through which the texts of the *Sharî'a* are understood and effected. This includes the *awâmir* (commands)[27] and the *nawâhî* (prohibitions), which he analyzes next, as to their relationship, definitions, characteristics, conditions, and implications.[28]

In addition, since the *Sharî'a* address comes in either generic or specified biddings, he devotes a lengthy section to the meaning of *'umûm* (general) and *khusûs* (particular) expressions, their interaction, and the conditions under which a generic command, for example, becomes specified.[29]

As for the clarity of the *Sharî'a* address, he divides it into the categories of *mujmal* (vague) and *mubayyan* (precise), defining the sub-categories of *bayân* in the process, such as *khâss*, *mufassar*, *mufassal*, *nass*, and *zâhir*. He shows why *mujmal* requires

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[26]al-Basrî, *al-Mu'tamad*, 1:14-42.

[27]al-Basrî, *al-Mu'tamad*, 1:43-180.

[28]al-Basrî, *al-Mu'tamad*, 1:200.

[29]al-Basrî, *al-Mu'tamad*, 1:201-315.

elucidation, how a *Sharî'a* utterance takes precedence over a prophetic act, and when it is permissible for the prophet to delay conveying a *Sharî'a* responsibility until it becomes necessary for the loci of obligation to fulfill it.

Next Abû al-Husayn discusses acts themselves, classifying them into (a) those of the loci of obligation and (b) those of the Prophet, which he regards as *Sharî'a* proof. He categorizes acts of the former into (1) *good* (the obliged or recommended) and *evil* (the prohibited or reprehensible), (2) the neutral acts, and (3) acts categorized by the *Sharî'a* and those based on reason.

As for the acts of the Messenger, they are placed after the *Sharî'a* address because they are, in Abû al-Husayn al-Basrî's view, valid proofs. Thus, he refines the concept of emulating the Prophet and sets criteria for differentiating between conflicting reports about his deeds.

This discussion is followed by a section on abrogation. Abû al-Husayn al-Basrî first defines *naskh* linguistically and in the *Sharî'a* terminology, distinguishing it from *badâ'* (change of mind), and discusses its application to the Qur'ân, the *Sunna*, *Ijmâ'*, and *Qiyâs*, independently, and then in relation to one source's abrogation of another. *Naskh* follows acts and precedes *Ijmâ'* in his scheme because, he holds, abrogation of the *Sharî'a* address, that is, the statements of the Qur'ân and the *Sunna*, is permissible; whereas *naskh* cannot be applied to *Ijmâ'*.

Following abrogation he devotes a score of chapters to *Ijmâ'*, which he claims is a valid *Sharî'a* proof, which can be reported by either *mutawâtir* or *âhâd* traditions. He explains its constituents,

defines its community, and establishes the possibility of *Ijmâ'* being founded on *ijtihâd,* as well as its being a validating factor for *qiyâs*.

Abû al Ḫusayn al-Baṣrî then treats the transmission of the Messenger's reports, expounding upon their classifications according to the certainty of the knowledge they impart and the criteria by which the transmissions are accepted or rejected. He explains the Companions' terminology and its implications in reporting traditions from the Prophet. Further, he defines the honorific Companion.

Next, *ijtihâd* and *qiyâs* are combined under one heading where al-Baṣrî also discusses related issues at great length, such as the definition, validity, and conditions of *qiyâs;* the justification of *ijtihâd* as a valid way of adducing rules; and *istiḫsân* as a controversial method of *ijtihâd.*

Closely connected to the discussion of *qiyâs* and *ijtihâd,* in his view, is the state of acts prior to revelation. Here al-Baṣrî examines the prohibition and permissibility of acts, which brings into the discourse the sources for deriving *Sharî'a* rules and the process of their deduction, *istidlâl.* He continues to present the Mu'tazilite arguments on the doctrine of good and evil, recognizing reason as a valid source for creating rules.

Al-Baṣrî's hierarchy is concluded with the method used to derive *Sharî'a* rules, which leads to an examination of the roles of both the seekers and givers of *fatwâs* (*muftî* and *mustaftî*) and a discussion of the issues relating to *taqlîd.*

AL-JUWANĪ'S *AL-BURHĀN*

Imâm al-Haramayn Abû Ma'âlî 'Abd al-Malik al-Juwaynî (d. 478/1085) combined giftedness and early training to master the religious sciences of *kalâm, uṣûl,* and Shâfi'ite *fiqh.* This was enhanced by the academic prestige he acquired when the great Seljuk vazir, Niẓâm al-Mulk, established on his account the Niẓâmiyya college in Naysâbûr, where al-Juwaynî taught for nearly thirty years. It was near the end of this remarkable career that certainly his most able student came to learn the Islamic sciences at his hand, Abû Ḥâmid al-Ghazâlî.[30]

Perhaps the former's most acclaimed *uṣûlî* work is his *al-Burhân fî Uṣûl al Fiqh.*[31] B. Khaldûn holds it to be one of the four major works written on the Principles of Law following the *mutakallimîn* approach to *uṣûl.* Al-Subkî praises it as both original and innovative,[32] calling it "*lughz al-ummah*" ("the enigma of the

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[30]See the unique and great praise of Juwaynî in Subkî, *Ṭabaqât al-Shâfi'iyya*, 5:165-222.

[31]His other *uṣûlî* works include *al-Waraqât fî Uṣûl al-Fiqh*, also an abridgement of al-Qâḍî Abû Bakr al-Bâqillânî's *al-Taqrîb wa al-Irshâd fî Uṣûl al-Fiqh.* Subkî, *Ṭabaqât al-Shâfi'iyya*, 5:171-172.

[32]The article in the *Encyclopaedia of Islam*, new ed., s.v., "al-Djuwaynî" by Carl Brockelmann-[L. Gardet] notes that *al-Burhân* is the first attempt to "establish a juridical method on an Ash'arî basis." However, this is not correct . For al-Bâqillânî's *al-Taqrîb wa al-Irshâd*, which al-Subkî praises as an unparalleled *uṣûlî* work, did exactly this one half century before the death of Juwaynî.

community").[33] Yet one wonders at how a book of such acclaim failed to measure up to either the renown of its author or the acclaim of its critics in terms of popularity. Al-Subkî suggests that the reason for this discrepancy is that *al-Burhân's* repudiation of Mâlik's *maslaha al-mursala,* as well as his criticism of Abû Hasan al-Ash'arî, caused the North African scholars of later periods to disregard the book.[34]

Al-Subkî's point is substantive. Nevertheless, there are perhaps other reasons for *al-Burhân's* limited popularity, not the least of which is Ghazâlî's abridgement of the book in *al-Mankhûl.* His organizational skill and facility in making obscure topics clear was evident even in this early work. In addition, however, al-Juwaynî assails Abû Hanîfa in the latter portions of the book which no doubt angered the Hanafite *fuqahâ'*. Yet perhaps the most important of reasons for its slight popularity over the generations is Ghazâlî's writing of *al-Mustasfâ,* for its unique organization and conciseness eclipsed his mentor's work, leaving scholars to turn to al-Juwaynî more exclusively in theology than in jurisprudence. Hence, it is his works on *kalâm* that they were more apt to engage.

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[33]The correct pronunciation is '*lughz*,' or '*laghaz*,' or '*lughaz*,' according to Manzûr, *Lisân al-'Arab*, 5:405; and Mustafâ, et al., *Mu'jam al-Wasît*, 2:836. It is not '*laghz*,' as noted in the Carl Brockelmann-[L. Gardet] *Encyclopaedia of Islam* article.

[34]Al-Subkî mentions that al-Mâzirî started a commentary on *al-Burhân*, but stopped because of Juwaynî's view on the divine knowledge of Allâh; *Tabaqât al-Shâfi'iyya*, 1:192-207.

'Abd al-'Azîm al-Dîb has edited *al-Burhân* based on nine manuscripts, and it is this edition which is referred to here. Its size approximates that of *al-Mustasfâ*, and both begin with a definition of the *usûl al-fiqh* and the limits of its relation to the sciences of *kalâm, fiqh*, and Arabic. Also, both recognize that *fiqh* is an extension of the sources, namely the Qur'ân, the *Sunna*, and *Ijmâ'*.[35] Al-Juwaynî, after briefly defining the *Sharî'a* rules, immediately follows with an argument against the Mu'tazilites regarding the status of the 'goodness' (*tahsîn*) or 'badness' (*taqbîh*) of acts prior to the arrival of revelation. This gives way to a discussion on the categories of *taklîf* in general, the issue of bearable and unbearable obligations, and the possibility of laying obligations upon the intoxicated, the compelled, and the disbeliever. Finally, he defines Reason (*'aql*), knowledge (*'ilm*), the avenues of knowledge, and rational proof. It is evident from his introduction to *al-Burhân* that al-Juwaynî is influenced by both the style and the issues of *kalâm*.[36]

Al-Juwaynî begins his discourse on *usûl* itself with chapters on language under the heading *al-Bayân* (*Elucidation*), wherein he defines and classifies explicit and ambiguous linguistic indications of *Sharî'a* rules. He devotes a number of pages to purely linguistic matters on the origins of languages and the relationship between etymological meanings and technical usages in the *Sharî'a*. He also

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[35] al-Juwaynî, *al-Burhân*, 1:83-86.

[36] al-Juwaynî, *al-Burhân*, 1:87-158.

lists linguistic particles common in *uṣûl* and explains their meanings.[37] He then devotes a detailed discussion to the imperative mood (*ṣîghat al-'amr*), how it indicates *Sharî'a* rules, and closes with a similar analysis of prohibitive commands.[38]

A chapter on the definitions of the five *Sharî'a* rules—*wâjib, mandûb, mahẕûr, makrûh,* and *mubâẖ*—interrupts his examination of mood.[39] However, he picks up the discussion showing how various moods express *Sharî'a* rules in general or specific, citing details of *fiqh* to illustrate his points.[40] This treatment is also intermitted by a discussion on circumstantial evidence (*qarâ'in*) as a means of specifying texts, but resumes and finally closes with a word on its indication through implication (*al-mafhûm*).[41]

A chapter on the religious validity of the Messenger's acts and the status of the laws of preceding nations follows.[42] Here again he uses *fiqhî* illustrations to explain his views, particularly in engaging the H̲anafite *fuqahâ'* in matters of *uṣûl*.[43] When he

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[37]al-Juwaynî, *al-Burhân*, 1:159-196.

[38]al-Juwaynî, *al-Burhân*, 1:197-307.

[39]al-Juwaynî, *al-Burhân*, 1:307-317.

[40]al-Juwaynî, *al-Burhân*, 1:318-371.

[41]al-Juwaynî, *al-Burhân*, 1:380-482.

[42]al-Juwaynî, *al-Burhân*, 1:483-510.

[43]al-Juwaynî, *al-Burhân*, 1:511-561.

recognizes that he has strayed from the subject, he is compelled to "renew connection," as he puts it, and returns to the topic of reports, where he defines the term '*ḥadîth*' and introduces its broad divisions, devoting attention to *mutawâtir* and *ahâd* reports. He also writes on the qualifications of transmitters, their endorsement, and delves in great detail into the ways of *ḥadîth* transmission. He closes with a chapter on the treatment of contradicting reports.[44] With his rather detailed inquiry into *ijmâ'*, al-Dîb's edition concludes the first volume of *al-Burhân*.[45]

The lengthiest chapter of the work, on *qiyâs*, opens the second volume.[46] It is within this discourse that al-Juwaynî sees fit to introduce the concept of *istidlâl* in order to discuss the inferring or extracting of *Sharî'a* rules from the texts. He calls upon certain positions of both al-Shâfi'î and al-Bâqillânî to aid him in this, particularly in their respective approaches to inferring *Sharî'a* rules.[47] It is here where al-Juwaynî introduces *istishâb*, regarding it as simply a means of extracting rules, unlike Ghazâlî who holds it to be one of the four *Sharî'a* sources.[48]

Juwaynî proceeds with the matter of the enforcement of

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[44]al-Juwaynî, *al-Burhân*, 1:564-669.

[45]al-Juwaynî, *al-Burhân*, 1:670-725.

[46]al-Juwaynî, *al-Burhân*, 2:743-1112.

[47]al-Juwaynî, *al-Burhân*, 2:1113-1134.

[48]al-Juwaynî, *al-Burhân*, 2:1135-1142.

conflicting texts before resuming his inquiry into *qiyâs*, where he draws distinctions of preference between the various modes of analogy.[49] *Naskh*, then, emerges as the final chapter in all the known copies of *al-Burhân* except the Turkish manuscript.[50] Ghazâlî, in *al-Mankhûl*, reproduces Juwaynî's criticisms of Abû Hanîfa from *al-Burhân*. Upon examination, it is not difficult to imagine why many transcribers would hesitate to include such heavy criticism of the latter in their manuscripts.

In conclusion, the absence of most of the Mu'tazilite *usûlî* works renders al-Basrî's *al-Mu'tamad* as this school's best representative—especially since the author includes in it many opinions of the persuasion's prominent legists, such as 'Abd al-Jabbâr, al-Jubbâ'î, Abû Ishâq al-Nazzâm, and Abû Hâshim.[51] Moreover, it is the best organized *usûlî* work up until the writing of *al-Mustasfâ*. As noted above, he sought to sift out the *usûlî*

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[49]al-Juwaynî, *al-Burhân*, 2:1202-1292

[50]See the description of this manuscript in *al-Burhân*, 1:70, where there is an appendix treating the subject of *ijtihâd* and *fatwâ* that takes about 50 pages, wherein he openly attacks Abû Hanîfa in a way that reflects Juwaynî's suffering from the persecution of the Hanafite vazir, al-Kundirî. For further details, see Subkî, *Tabaqât al-Shâfi'iyya*, 4:62.

[51]Abû al-Husayn al-Basrî cites his own commentary on 'Abd al-Jabbâr's *al-'Umad*, and mentions the latter's name nearly 250 times; he also cites Abû 'Alî al-Jubbâ'î more than 50 times, and others: Abû Ishâq al-Nazzâm, 6; Abû Hâshim al-Mu'tazilî, nearly 50 times, etc. See , *al-Mu'tamad*,1:7, 8, 103, 324; 2: 552, 561, 768, 860, etc.

discussions from those of *kalâm*, though he too engaged excessively in certain issues of theology. Indeed, perhaps *kalâm* was unavoidable when essaying the legal principles from the Mu'tazilite point of view, for discussions of *taqbîh* and *tahsîn* (declaring acts 'good' or 'bad') and *wujûb al-aslah* (the necessity of Allâh doing what is best for his creation) seem to inevitably arise.

It is evident, however, that Abû al-Husayn is an independent thinker who did not hesitate to stand against even the most seminal formulators of *i'tizâl* when he was less than convinced by their arguments.[52] Still, he remains within the classical approach to *usûl* initiated by al-Shâfi'î, which, as we have seen, was follwed by al-Juwaynî and most other works on the subject.

Thus, although Ghazâlî did not explicitly cite Abû al-Husayn al-Basrî in *al-Mustasfâ*, it is reasonable to assume that he was aware of *al-Mu'tamad's* issues. In fact, it is very likely that he used it as one source for identifying and defining some of the many Mu'tazilite positions that he poses and then responds to in *al-Mustasfâ*.

As for Juwaynî's *Burhân*, while it is true that it does not compete with the organizational structure and conciseness of even

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[52]See al-Basrî, *al-Mu'tamad*, 1:99, where he takes issue with his teacher 'Abd al-Jabbâr's definition of *'ijzâ' al-'Ibâdah*,' 1:306, where he differs in stipulations required of texts in the general linguisitic mood. He also differs with his definition of *naskh* (abrogation). See *al-Mu'tamad*, 1:396-397. In addition he criticized many notable Mu'tazilites in Baghdad with reference to the permissibility of *taqlîd al-'ammî li al-ijtihâd* (the layities' imitation of independent juristic thought). See also Abû Sulaymân, *al-Fikr al-Usûlî*, p. 245.

Abû al-Husayn's *Mu'tamad* , let alone *al-Mustasfâ*, it without doubt exerts the greatest influence in shaping Ghazâlî's *usûlî* works. This is not surprising when one considers that Ghazâlî devoted a good part of his early scholarship to the explication of the *Burhân*, which culminated in his writing of *al-Mankhûl*.[53] Indeed, Ghazâlî remained loyal to *al-Mankhûl*—and thus to *al-Burhân*—in much of his later writings.[54]

Ghazâlî, then, has adopted a good number of al-Juwaynî's opinions, but without dogmatic adherence to them. Rather, some of these find more comprehensive textual and contextual expression in Ghazâlî's *usûl* than in al-Juwaynî's. For example, Imâm al-Haramayn considers the *Sharî'a* sources to be three and does not mention in his treatment of *qiyâs* more than a cursory statement of its importance, accepting and endorsing al-Bâqillânî's definition of it in a footnote, continuing its discussion thereafter.[55] Ghazâlî, on the other hand, explicitly rules that *qiyâs* is not a *Sharî'a* source,

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[53]There are spurious reports that after seeing *al-Mankhûl*, al-Juwaynî said to Ghazâlî, "You have buried me alive. Could you not have waited until I died." This report seems dubious, especially considering al-Juwaynî's widely-reported character of willingness to learn from all—even his students—long after he was an accomplished scholar. Yet the fact remains that while the *Mankhûl* wins in conciseness, it falls far short of reproducing the originality, the strength, the warmth, and the standard of Arabic found in the *Burhân*.

[54]Ghazâlî, *Shifâ' al-Ghalîl*, pp. 8, 16; and *al-Mustasfâ*, 1:3, for example.

[55]al-Juwaynî, *al-Burhân*, 1:85-86 and 2:745.

but rather an instrument that the *mujtahid* utilizes to arive at a *Sharî'a* rule on something that is not specified in the *Sharî'a* texts. However, Ghazâlî does use a number of the expressions found in his mentor's book; for example, the phrases '*kashf al-ghiṯâ*' (unveiling [this question]; to shed light); '*wa al-mukhtâr 'indana*' (the preferred opinion, choice opinion with us); '*wa al-ḏâbiṯ*' (the precise [opinion or meaning is . . .]).[56]

Since Ghazâlî did not explicitly state his sources in citing al-Bâqillânî's views, one cannot determine whether he relied on *al-Burhân* for them or went directly to al-Bâqillânî's *Taqrîb al-Irshâd*. However, one finds in the *Burhân*, as in *al-Mustaṣfâ*, numerous references from the latters *uṣûlî's* work. Moreover, al-Juwaynî's independence is reflected in his controverting of forty-one of al-Bâqillânî's positions, twenty-five of al-Shâfi'î's, and three of al-Ash'arî's, a trend that is also born out in *al-Mustaṣfâ*.[57-58]

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[56]al-Juwaynî, *al-Burhân*, 1:696, 2:1196; 2:1356 and 1358 This phrase may have been used by the school in general.

[57]al-Juwaynî, *al-Burhân*, 2: 1443-1449.

[58]It is important for modern research to focus on al-Bâqillânî's legal views, since there is considerable research on his theological opinions. Despite the loss of his legal works, this can be obtained through other various *uṣûlî* books that contain his opinions. Such as the above mentioned works, as well as Abû Ya'la's, *K. al-'Udda*, Râzî's, *al-Maḥṣûl*.

THE *MUTAKALLIMŪN* VERSUS THE *FUQAHĀ'*

The above three works, *al-Mughnî*, *al-Mu'tamad*, and *al-Burhân*, along with *al-Mustasfâ*, belong to one of the two main approaches of *usûl al-fiqh* dominating that science's writing, termed by Ghazâlî, and later b. Khaldûn, as the *Mutakallimûn* or Shâfi'ite method.[59] The other method, in contradistinction to the first, is referred to as the *Fuqahâ'* or Hanafite approach, and its first elaborate and comprehensive representative work is Dabbûsî's *Taqwîm Usûl al-Fiqh*.

In *al-Mustasfâ*, Ghazâlî's criticism of the *Fuqahâ'* illustrates the influence of Dabbûsî on their approach. Ghazâlî states:[60]

> The love for *fiqh* has led a group of legists of Transoxania, namely Abû Zayd [al-Dabbûsî], may Allâh have mercy on him, and his followers, to mix many questions of the details of *fiqh* with its principles. Although they brought this by way of examples to illustrate how a principle leads to certain detailed legal points, they did so in excess.

B. Khaldûn, in more positive language than Ghazâlî, acknowledges that the "best writings on it [*usûl al-fiqh*] by an early [Hanafite] scholar are the works of Abû Zayd al-Dabbûsî."[61] He further distinguishes Dabbûsî for his mastery of analogical reasoning (*qiyâs*).

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[59]Ghazâlî, *al-Mustasfâ*, 1:10.

[60]Ghazâlî, *al-Mustasfâ*, 1:10.

[61]Ibn Khaldûn, *al-Muqaddima*, pp. 576-577.

However, before introducing *Taqwîm* and its author and pointing out some of the issues that illustrate the disagreements between Dabbûsî and Ghazâlî, it is both useful and interesting to give a brief account of the principle characteristics typifying each *uṣûlî* approach.

The task of *uṣûl al-fiqh* is to locate and develop the mechanism for generating laws and rationalizing legislation from the *Sharî'a* sources. It is worthy of note that not every legal school elaborated an independent methodology for extracting rules. Instead, only the two aforementioned tendencies dominated in the classical period.

The *Mutakallimûn* did not care much for illustrating their legal principles with many exemplary *fiqhî* case studies that would have concretized their arguments. Rather, they concerned themselves with articulating sound governing principles that did not necessarily correspond with the particular legal views of any *madhhab*. Hence, their principles were formulated from essences gleaned from the primary sources. They were, then, necessarily more abstract.

The *Fuqahâ'*, on the other hand, used specific case studies thoroughly in their method to extract governing theoretical bases. So they naturally depended heavily on legal precedents—which necessarily distinguishes between the past rulings of the *madhhab's* notable jurists. They were therefore more practical than their *Mutakallimûn* counterparts.

In regard to analogical reasoning (*qiyâs*), for instance, the consensus is that a new case may fall under the principle of a legal

precedent if the common essential feature (*'illa*) is explicitly stated as the reason for which the Lawgiver recognizes the principle in a given case. But it is when the reason is not specified and identifying it is left to interpretation that sharp legal differences appear, as is the case between Ghazâlî and Dabbûsî.

Ghazâlî argues that even if the reason is not explicitly mentioned, *qiyâs* is still implied. Therefore, the *mujtahid* is entitled to deduce the underlying reason from the said principles and proceed in applying *qiyâs* on new cases that share the common extracted *'illa*, which he recognized in the original case.

Dabbûsî, on the other hand, appears to hold that the rational process of extracting the *hikma* (underlying wisdom) has the potential of being unsystematic, leaving room for different conclusions under various circumstances. Thus, *qiyâs* should only be applied to identifiable causes that are textually recognized as necessitating rulings. So "principles [*ahkâm*] do not follow from underlying wisdom [*hikma*]."[62]

The case of breaking fast while travelling is a good illustration of the preceding discussion. The Qur'ân does not specify the underlying wisdom for allowing the traveller, or the sickly, to break fast during *Ramadân*.[63] Following from Dabbûsî's concern, one may extract 'hardship' as the underlying reason for which permission is granted; but hardship is different from one

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[62]Ghazâlî, *Shifâ' al-Ghalîl*, p. 604.

[63]Qur'ân, 2:184.

person to another, from one time to the next. Thus, a resident who faces hardship may not be allowed to break fast according to this verse, while a traveller who enjoys comfort may.

Dabbûsî concludes that, in this case, only travel will systematically objectify the reason for breaking fast during *Ramadân*. Therefore, he rejects Ghazâlî's method of extracting an underlying wisdom which would not systematically facilitate *qiyâs*.[64]

Dabbûsî's positions gave life to many a debate and were widely considered by generations of legists. The distinguished *fuqahâ'* of Merv, for example, were known in particular for supporting their legal opinions with arguments they attributed to Dabbûsî. Ghazâlî expressed his disappointment with the Mervans' "misunderstanding of Dabbûsî's views and teachings."[65] Indeed, Ghazâlî states candidly in his introduction to *Shifâ' al-Ghalîl* that he had hoped not to write on the subject of *usûl al-fiqh* again, having abridged al-Juwaynî's *Burhân* in *al-Mankhûl*.[66] Nevertheless, "what has been repeatedly circulated of Dabbûsî's opinions [on *usûl*] and the misunderstandings concerning them" compelled him to do so.[67] According to Ghazâlî, Dabbûsî was highly quoted in

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[64]Ghazâlî, *Shifâ' al-Ghalîl*, pp. 604-619; and *al-Mustasfâ*, 2:299.

[65]Ghazâlî, *Shifâ' al-Ghalîl*, p. 322.

[66]Ghazâlî, *Shifâ' al-Ghalîl*, pp. 8-9.

[67]Ghazâlî, *Shifâ' al-Ghalîl*, p. 9.

circles of law and legal debate, and his positions were equally abused. So, Ghazâlî wrote on *qiyâs* in *Shifâ' al-Ghalîl* largely in response to the former's legacy.

In *Shifâ' al-Ghalîl*, Ghazâlî engages Dabbûsî's opinions (those that he had heard quoted and those that he quotes himself, primarily from Dabbûsî's *Kitâb al-Taqwîm*) with characteristic alacrity. He mentions Dabbûsî by name in no less than twenty-four places scattered throughout the book.[68] In this sense, Ghazâlî sets up no rival to him.

Yet Dabbûsî, himself, devoted much attention to al-Shâfi'î's legal views. Thus, it is no wonder that Ghazâlî, as champion of the Shâfi'ite school, paid particularly close attention to Dabbûsî in *Shifâ'* and referred to his views in *al-Mustaṣfâ*. Still, if one looks comprehensively, it becomes clear that what is being contended here is a case of feuding between the Ḥanafites and the Shâfi'ites.

ABŪ ZAYD AL-DABBŪSĪ

The *laqab* al-Dabbûsî seems to have been derived from his relatively obscure birthplace, Dabbûsîyya.[69] In the literature,

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[68]Ghazâlî, *Shifâ' al-Ghalîl*, pp. 9, 14, 142, 177-179, 181, 183, 310, 317, 322, 333, 379, 414, 460, 465, 510, 513, 584, 604, 650, 652.

[69]Dabbûssîya is village north of the river Oxus and east of Bukhara in the region of Sughd, west of Samarqand. There are detailed descriptions of Sughd in 'Abd al-Mun'im al-Himayrî, *Kitâb al-Rawḏ al-Mi'ṭar fî Khabar al-Aqṭâr*, ed. I 'Abbas (Beirut: Library of Lebanon, 1975), pp. 233 and 362; Shihâb al-Dîn Abû 'Abd Allâh Yâqût (al-Ḥamawî), *Mu'jam al-Buldân*, 5 vols. (Beirut: Dâr Ṣâdir and Dâr Beirut, 1957), 5:45-47; and Sufiy al-Dîn 'Abd al-Ḥaqq al-

Dabbûsî is nearly always, if not universally, referred to by the aforementioned *laqab*. But al-Hijwî refers to him as al-Samarqandî.[70]

The only source that explicitly states Dabbûsî's date of birth is b. al-Athîr, who records it as the year 376/987.[71] But, for the most part, his family background and childhood remain shrouded in history, as is the particular process of his education. It appears, however, that Dabbûsî was raised in a traditional religious family and that his primary Islamic education began at home. In any case, he must have gone to Samarqand fairly young, where the formation of his knowledge in *fiqh* and his development as a Hanafite jurist were accelerated and refined. Moreover, it is likely that even as a student he had contact with the great centers of learning in Bukhârâ—which, along with Samarqand, rivaled Baghdad in learning in Dabbûsî's day.[72]

Among his early mentors was Abû Ja'far al-Usrûshânî, whose legal training links him to Muhammad b. al-Hasan through a

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Baghdâdî, Masâsid al-Atla', 3 vols. ed. 'Alî al-Bijâwî (Beirut: Dâr al-Ma'rifa, 1954), 2:523 and 2:842.

[70]al-Hijwî, *al-Fikr al-Sâmî fî Târîkh al-Islâmî*, 2:179.

[71]Ibn al-Athîr, *al-Lubâb fî Tahdhîb al-Ansâb*, 3 vols. (Beirut: Dâr Sâdir, 1980), 3:19.

[72]Philip Hitti, *History of the Arabs*, 10th ed. (New York: St. Martin Press, 1981), p. 462. Hitti notes that the Samanid ruler, Nûh II (d. 997 C.E.), invited b. Sîna and gave him access to his rich royal library in Bukhara, which had tens of thousands of books.

scholarly chain that starts with the important Hanafites, 'Alî al-Jassâs (d. 370/980) and Muhammad b. al-Fadl al-Kamârî (d. 381/991).[73] Dabbûsî, himself, gained widespread notoriety and was given accolades as "one of the great followers of Imâm Abû Hanîfa,"[74] and the "Shaykh of the Hanafites . . . judge and scholar of the region beyond the river [Oxus]."[75]

Al-Dabbûsî's Taqwîm Usûl al-Fiqh

Taqwîm Usûl al-Fiqh wa Tahdhîb Adillat al-Shar' is a milestone in the Hanafite school for its treatment of the *Fuqahâ'* method of *usûl al-fiqh.*[76] Its organization is classical: an opening

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[73]Kamârî studied under al-Sabadhmûnî whose teacher was Abû Hafs al-Saghîr. His father, Abû Hafs al-Kabîr, from whom al-Saghîr learned, was a student of the Hanafite notable, Muhammad b. al-Hasan al-Shaybânî. See al-Laknawî, *al-Fawâ'id*, p. 107.

[74]Ibn Khallikân, *Wafayât al-A'yân*, 2:251.

[75]Al-Dhahabî, *Siyar A'lâm al-Nubalâ'*, 17:521. Also, al-Dhahabî, *al-'Ibar*, 3:171, states that Dabbûsî was "the first to establish *'ilm al-khilâf* (the science of legal difference) and give it prominence."

[76] 'Abd al-Rahîm al-Afghânî has proposed to edit the second volume of *Taqwîm al-Adilla* as a Ph.D dissertation to the Islamic University in Medina. I have seen his manuscript in March 1986 during my visit to the university. Thirteen manuscripts are known to be in existence. Also, I have seen the manuscript of Dâr al-Kutub in Cairo. The binding was remarkably intact and it is written on glossy paper. Fakhr al-Islâm al-Pazdawî (d 482/1088) wrote a commentary on it which is not located; however, 'Abd al-'Azîz al-Bukhârî (d. 730/1329) quoted from that commentary in *Kashf al-Asrâr*, 4 vols. (Beirut: Dâr al-Kitâb al-'Arabî, 1974), 2:252, 356, and 3:367.

position followed by a statement of validity and definitions of terminology derived from the Islamic legal sources, i.e., the Qur'ân, *Sunna*, *Qiyâs*, *Ijmâ'*, etc. It therefore addresses the problems of understanding the Islamic textual sources so as to provide a mechanism for their application.

Dabbûsî follows the classical structure also in dividing his book into *abwâb* (chapters; pl. of *bâb*). The entire work is comprised of one-hundred and seven such chapters, the first three of which—like most of the literature of *uṣûl* written in the fourth century—commence with a discourse on the *Sharî'a* proofs and their types.

In the next two chapters, four and five, he defines the Qur'ân, explaining its authority as a *Sharî'a* source, and develops a lengthy argument on *tawâtur*, concluding that any *Sharî'a* rules imparted from such texts, be it the Qur'ân itself or the *mutawâtir Sunna*, are compelling; therefore the loci of obligation must comply with them.

Dabbûsî next introduces *ijmâ'*, in chapters six through eight, first by defining it and then by specifying its forms. He, of course, argues for its validity against those who reject it as a principle *Sharî'a* source. However, in the next nine chapters, Dabbûsî brings into focus the impact of language in *uṣûl*, opening with the various kinds of 'speech' and the diverse methods of interpreting the status of the imperative and prohibitive moods.

He returns to his discourse on the *Sharî'a*, but in a defense for its necessity, which brings him to the nature of its rituals and ultimately to a classification of the different sorts of *Sharî'a* rules themselves. This culminates in an analysis of concepts that revolve

around performance and compliance with the rules, namely *'azîma* and *rukhṣa*, and *adâ'* and *qaḏâ*.

The next ten *bâbs*, through the thirty-fourth, find Dabbûsî resuming his discussion on language, treating in particular length the application of technical and linguistic terminology. He also investigates the *Sharî'a* texts that give 'apparent' indications as well as the concept of interpretation (*ta'wîl*).

In the next few chapters he treats solitary reports, the various types of reporters, and the criteria for accepting and rejecting transmissions. This is followed by the status and reliability of transmission by way of written copies of *ḥadîth*. Dabbûsî proceeds in the next two chapters, forty-five and forty-six, to set criteria for the acceptance and rejection of the *ḥadîth* themselves.

In *bâb* forty-seven he addresses the topic of contradiction between texts and the approaches to reconcile seemingly conflicting ones through interpretations that remove the apparent discrepancies. This, as one would expect, leads to a discussion of abrogation (*naskh*) in the following six chapters. Here he begins by defining '*naskh*,' defending its occurrence in the *Sharî'a* texts, and then classifies and distinguishes those texts which are not liable to abrogation from those that are.

Next he introduces the subject of the Prophet's canonical deeds establishing their status and devoting an interesting chapter on what he terms the Prophet's *ijtihâd* and the *Sharî'a* value of the his personal opinion.

He closes out the first volume of the Cairo manuscript with discussions on the status of the religious laws of preceding nations, concerning their validity for Muslims. Finally, he discusses the authority of the Companions' and Successors' legal positions with regard to the *Sharî'a*.

The second volume begins with Dabbûsî's most important and most detailed inquiry, *qiyâs*. Ibn Khaldûn writes, "The Hanafites have written a great deal on their approach. . . . The best writings on it by an early scholar are the works of Abû Zayd al-Dabbûsî." He further states, "He [Dabbûsî] wrote more widely on analogical reasoning than any other Hanafite and completed their research methods and conditions governing this discipline."[77] Indeed, Dabbûsî's discourse on *qiyâs* continues for a full twenty-seven *bâbs*.

He begins with a defense of *qiyâs'* validity, refuting the arguments of the Zâhirites who oppose it. He defines its linguistic and technical meanings, its conditions, its requirements, and the qualifications of the practitioner of *qiyâs*. In great length he analyzes the various kinds of valid and invalid analogies, which leads him into a treatise on the *'illa* (underlying cause or *ratio legis*) that forms the very basis of analogy and its effect on the *Sharî'a* rules. He also considers the validity of using *qiyâs* as means proving some texts as worthier, for a given case, than others.

Dabbûsî then treats the supposed unacceptable sources of the *Sharî'a*, which revolve primarily around *taqlîd*. He delves,

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[77]Ibn Khaldûn, *al-Muqaddima*, pp. 576-577.

however, into its various valid expressions, such as the following of some scholars by others and the acceptance of the *'ulamâ'* by the *ummah*. But he attacks the notion of blind following of forefathers, or non-Muslims, and debases the concept of 'inspiration' (*ilhâm*) as a valid source of Law.

Dabbûsî—like Ghazâlî in *al-Mustasfâ*—divides *istishâb* into four types. Yet he accepts only two forms as valid and does not, as Ghazâlî does, hold it to be one of the four primary sources of Law. He strongly attacks the notion of a mujtahid resorting to *istishâb* without thoroughly searching for *Sharî'a* proof or arriving at rules solely on its basis, holding this to be untenable innovation in religion.

Yet, as a loyal Hanafite, he recognizes the authority of *istihsân*, saying that arriving at rules of *fiqh* by way of this source differs from relying on caprice, as the Hanafites opponents charge. Rather, he contends, it is a result of a jurist's awareness of the *Sharî'a* and its aims. Thus it is a valid method even if the jurist does not explicitly cite a *Sharî'a* text to substantiate his legal judgement.

Chapters thirty-four to forty-one of volume two Dabbûsî commits to the operation of *ijtihâd*, where he gives the qualifications for a *mujtahid*. Next, he examines the problem of whether a *mujtahid* is invariably correct or is liable to error in some circumstances.

Dabbûsî then returns to the loci of obligation, outlining the limits of their capacities and the influences that eliminate them.

This eventually takes him back full circle to the role of reason in the *Sharî'a* and rational proof.

Like Ghazâlî, Dabbûsî's spiritual inclinations also find expression in this book of *uṣûl*. At the close of *Taqwîm al-Adilla*, he writes on the conditions of the heart and the relationship between law and ethics.

In following the *fuqahâ'* approach, Dabbûsî's work, as Ghazâlî points out, uses many illustrations from the details of Law itself. In addition, he, again like Ghazâlî in *al-Mustaṣfâ*, shows a number of methodological tendencies. The most obvious of these is his propensity to analyze things into four parts.[78]

The Primary Works of Dabbûsî

Although Dabbûsî wrote many books, *Ta'sîs al-Naẓar* is the only one in print. However, an annotated list of his works may be useful. Yet the fact that these works are not available necessarily prevents a comprehensive evaluation of his accomplishments and therefore limits the scholarly analysis of this important jurist. In any case, it is hoped that what follows will in some way stimulate the reintroduction of these works and their author to Islamicists.

•***Al-Asrâr fî al-Uṣûl wa al-Furû'*** is considered one of Dabbûsî's most valuable legal works. It addresses classical issues

[78]For example, he says that the deniers of *qiyâs* are of four types; to know *qiyâs* one must know four things; the conditions of *qiyâs* are four; *qiyâs* itself is divisible into four kinds; even with respect to the objections of applying the underlying cause of the rules upon deductions of opinions of *fiqh*, he divides them into four aspects; and he divides the *sababs* themselves into four.

of *fiqh*, but its comparative method distinguishes it from the more common *madhhabî* references on the subject. It is in three volumes, and there are at least sixteen located manuscripts in the world.[79]

•***Al-Amad al-Aqṣâ*** addresses spirituality in Islam. I reviewed a manuscript of this work in the al-Azhar library in 1973. It opens with a dialogue between Dabbûsî and a student that develops into a question-answer exchange where general moral instruction and advice about Islamic character are given throughout. It has eleven chapters, according to Ḥâjî Khalîfa.[80] There are a minimum of thirteen existing manuscripts.[81]

•***Al-Anwâr fî Uṣûl al-Fiqh*** is a little book that examines the basics of *uṣûl al-fiqh*. According to Shishin's *Rare Manuscripts of Turkish Libraries*, the only manuscript known to be in existence is in Burdûr, a remote town in southwestern Anatolia.[82]

•***Al-Ta'lîqa fî Masâ'il al-Khilâf bayna al-A'imma*** is a book of comparative *fiqh*. It is referred to by this title in Turkey; however, the Egyptian copy is titled *Juz' min Masâ'il al-Khilâf*. It is in Taymûr's collection of Dâr al-Kutub, Cairo.[83]

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[79]Sezgin, *Geschichte*,1:456

[80]Khalîfa, *Kashf al-Ẕunûn*, 1:168.

[81]Sezgin, *Geschichte*, 1:456;

[82]Shishin, *Rare Manuscripts of Turkish Libraries*, 2:10.

[83]Sezgen, *Geschichte*, 1:456.

•***Sharḫ al-Jâmi' al-Kabîr li al-Imâm al-Shaybânî*** is referred to in Khalîfa's *Kashf al-Ẕunûn*[84] and *Hadîyat al-'Arifîn.*[85] However, the location of the manuscript(s) is unknown.

•***Al-Naẕam fî al-Fatâwa's*** manuscript is not yet located.[86]

•***Tajnîs al-Dabbûsî*** is cited by Ḫâjî Khalîfa; however, it may be another title for *al-Naẕam fî al-Fatâwa*. No other information is available.[87]

•***Khazânat al-Hâdî*** is cited by Ḫâjî Khalîfa, also.[88] Likewise, no other information is available.

•***Ta'sîs al-Naẕar*** first appeared in print in Cairo, 1902, edited by Shaykh Muṣtafa Muḫammad al-Qabbânî. It was based on the two manuscripts located in Dâr al-Kutub. In 1972, Zakarîyâ 'Alî Yûṣuf of The Imâm's Press poorly reprinted al-Qabbânî's edition.

There are at least five manuscripts of *Ta'sîs* in existence (for their location consult Sezgin's *Geschichte des Arabischen Schrifttums*). It contains eighty-four theoretical bases (*uṣûl*) that are categorized throughout the book's nine chapters: The first chapter has 22 bases; the second, 4; the third, 3; the fourth, 4; the

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[84]Khalîfa, *Kashf al-Ẕunûn*, p. 568.

[85]Bâshâ, *Hadîyat al-'Arifîn*, 2:53-4.

[86]Al-Ḫijwî, *al-Fikr al-Sâmî*, 2:179; and al-Laknawî, *Kitâb al-Fawâ'id al-Bahîya*, p. 107.

[87]Khalîfa, *Kashf al-Ẕunûn* , 1:352.

[88]Khalîfa, *Kashf al-Ẕunûn* , 1:703.

fifth, 7; the sixth, 2; the seventh, 5; the eighth, 25; and the ninth, 12.

This general account of the *usûlî* literature and the main trends that emerged in its development is hoped to sharpen awareness of and appreciation for Ghazâlî's articulation of its quintessence in *al-Mustasfâ min 'Ilm al-Usûl*.

CHAPTER XI

GHAZĀLĪ'S *AL-MUSTAṢFĀ*

Al-Mustaṣfâ is considered the last of Ghazâlî's great works. Fortunately, he does not leave his readers in the dark about the circumstances that led him to its writing. Returning to teach in the Niẓâmiyya school at Naysâbûr, he explains, required him to again treat the study of *fiqh* and its principles, for they were essential parts of the curriculum in such religious institutions.

Apparently his disciples were not satisfied with his books on *uṣûl*, namely, *al-Mankhûl* or *Tahdhîb al-Uṣûl*. For the first was a summary of his teacher's work, and the second it seems was lengthy and not well organized. They expected "The Proof of Islam" to revive the study of Law, even as he had done for the religious sciences with the monumental *Iḥyâ' 'Ulûm al-Dîn*, in a legal writing where unique and coherent organization would coalesce with comprehensive—but not tedious—explication of the *uṣûlî* issues.[1]

Ghazâlî responded to this future generation of jurists, commencing his work with the praise of *fiqh* and *uṣûl* as among the noblest of sciences and commending their practitioners as being of

[1]Ghazâlî, *al-Mustaṣfâ*, 1:4.

the highest rank and prestige and having the most followers.[2] This in itself was a major shift from the attitude toward *fiqh* and the *fuqahâ'* that Ghazâlî had displayed in mid-career and defended vigorously in *Ihyâ'*, which had invited a hostile and sometimes violent response from many jurists, especially in North Africa and Spain, to the degree that his book was banned and even burned.[3]

What, then, was Ghazâlî's earlier position concerning *fiqh* and the *fuqahâ'*? Ghazâlî divided religious scholars into two sorts: Those of the *heart*; and those of the *world*. The latter, whom he called the *'ulamâ' al-zâhir*, are the ornaments of this world and of temporal rulers. But the scholars of the inner world, *'ulamâ al-bâtin*, are the ornaments of Heaven and the kingdom of God.[4] Thus, the *muftîs* of the hearts are the scholars seeking salvation in the Hereafter. Based on their *fatwâ* one would be saved from the Ruler of that realm, just as the judgement of a *faqîh* saves one from (or brings one to) the punishment of a ruler in this world.[5] In typical fashion, he anticipates the question that will be raised against his categorizing of *fiqh* as *'ilm al-dunyâ'* (the science of this world) and offers a response:

Know that Allâh . . . has created this world as a provision for

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[2]Ghazâlî, *al-Mustasfâ*, 1:3.

[3]'Abd al-Karîm al-'Uthmân, *Sîrat al-Ghazâlî wa Aqwâl al-Mutaqaddimîn fîhî* (Damascus: Dâr al-Fikr, 1961), pp. 70 and 104.

[4]Ghazâlî, *Ihyâ' 'Ulûm al-Dîn*; 1: 22.

[5]Ghazâlî, *Ihyâ' 'Ulûm al-Dîn*; 4:213.

> the Day of Resurrection so that they [mankind] can utilize from it whatever is fit for maintaining [life]. Thus, if they handle [the world] with justice, conflicts and disputes would cease and the *fuqahâ'* would be of no use. But people utilized passions and whims; that is why disputes emerge and consequently there is great need for an authority to manage them. And the authority needed the Law to rule in accordance with. Thus, a *faqîh* is the teacher of the ruler and his guide to the ways of managing the affairs of people.[6]

But a *faqîh* is not entirely removed from the Hereafter, Ghazâlî concedes. For he approaches the acts which relate to it, with reference to Islam and its rites, such as prayer, *zakât* and the rest of what is considered as lawful or unlawful. Yet close examination of the limits of the legist's inquiry into these affairs, in his view, reveals that it does not transcend this world.

As for Islam, the *faqîh* addresses the validity of the *Sharî'a* acts, concentrating on what is revealed and apparent. The heart, however, is removed from his jurisdiction, for the Prophet has set the limits of those in authority, saying, "Did you open his heart?" meaning that one may be judged only upon conduct.[7]

It appears, then, that Ghazâlî had become disturbed by the great attraction *fiqh* and the classical sciences held in Muslim society. His anxiety seems to have been complicated by the feeling that this fascination with *fiqh* came at the expense of a genuine spiritual need for salvation. Reflecting on the *fuqahâ'* of his time he writes in *Ihyâ'*:

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[6]Ghazâlî, *Ihyâ' 'Ulûm al-Dîn*; 1:17.

[7]Ghazâlî, *Ihyâ' 'Ulûm al-Dîn*; 1:17-18.

> If a *faqîh* is asked about the essence of the meanings of 'sincerity,' 'trust in Allâh,' or 'avoidance of being pretentious,' he would be puzzled and stop short of responding, in spite of the fact that it is an obligation upon him to know, and that by neglecting this, he shall perish in the Hereafter. But if you ask a *faqîh* about *'li'ân,' 'zihâr,' 'sabq,'* or *'ramî,'* he would list for you volumes of minute details upon which time's ages shall pass without their need.[8]

This clearly shows his disillusionment with the conscience of the legal establishment and one might infer with his society as a whole. Yet this bitterness passed, as shall be seen.

However, Ghazâlî's early controversial positions on *fiqh* and the *fuqahâ'* still draw fire today. Some contemporary researchers have suggested that this shows the influence of Christianity upon him. They cite Christ's stand according to the New Testament against the legal establishment of the Jews, specifically the Pharisees.[9] 'Abd al-Rahmân Dimashqiyya, a proponent of this thinking, holds that Ghazâlî's writing of the book *al-Radd al-Jamîl lî 'Ilâhiyyât 'Isâ bî Sarîh al-Injîl,* which refutes the divinity of Jesus, is evidence for this assumption.[10] He claims that Ghazâlî was aware of the New Testament, and quoted much from it.

If such a position were to merit serious consideration, Ghazâlî is primarily defining *fiqh*, its role, and the function of its scholars,

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[8]Ghazâlî, *Ihyâ' 'Ulûm al-Dîn*; 1:21.

[9]New Testament, "Matthew"; 12:1-7, 15:1-3,.19:3-9.

[10]'Abd al-Rahmân Dimashqiyya, *Abû Hâmid al-Ghazâlî wa al-Tasawwuf* (Riyad: Dâr Tîbâh, 1986), pp. 209-211

while Dimashqiyya's New Testament 'proofs' express Jesus' outrage with the Jewry's clergy of his time. But it is dubious to assume that a Muslim scholar's awareness of the New Testament formed his attitude toward the *faqîhs* of his time. This doubt becomes absurdity when that someone is the like of a Ghazâlî, the refuter of philosophy, the mystic, the most prominent Shâfi'ite since al-Shâfi'î himself, etc. It is more likely that Ghazâlî's disenchantment with the prevailing spirit of the religious scholarly community and his own spiritual crisis shaped his view.[11]

Indeed, by the time of his writing of *al-Mustaṣfâ*, the mature Ghazâlî praises both *fiqh* and *uṣûl* and their specialists:

> Yet the noblest kinds of knowledge are those where *'aql* [reason] and *sam'* [revealed authority] play a role, in which rational opinion and the *Sharî'a* are constant companions. The science of jurisprudence and its principles are of this kind, for they take, from the purity of the *Sharî'a* and reason, the straight path. . . .
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> It is because of the nobility of the science of jurisprudence and its basis that Allâh has given ample motivations to people to seek it. Those who are

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[11] Indeed, George F. Hourani, "A revised Chronology of Ghazâlî's writings," *Journal of the American Oriental Society* 104 (1984) 289-302, contends that Hava Lazarus' assertion that *al-Radd* is fabricated is decisively correct, in spite of arguments for its authenticity by R. Chidiac, the book's editor.

However, it should be noted that Lazarus' claim that the book is not mentioned in any list of Ghazâlî's works before the twentieth century or by any biographer is somewhat misleading. Abû 'Abd Allâh Muḥammad b. 'Abd Allâh b. As'ad al-Yâfa'î al-Yamânî (d. 768/1366) mentions *al-Radd* in his book *Mir'ât al-Janân wa 'Ibrat al-Yaqẓân fî Ma'rifat al-'Ibar min Ḥawâdith al-Zamân*, according to 'Abd al-Karîm 'Uthmân, *Sîrat al-Ghazâlî*, p. 84.

> knowledgeable of it are placed as the highest of scholars, are the greatest in prestige, and have the largest following and helpers.[12]

With this new spirit Ghazâlî started *al-Mustaṣfâ*, aiming for a systematic, comprehensive treatment of the principles of Law that would ensure accessibility to the student of Islamic jurisprudence.

> I . . . combine herein both compilation and investigation to facilitate understanding of the meanings [of *uṣûl*], for one cannot dispense with the other. I have composed and brought to it an admirable, delicate construction. The reader is from the beginning made aware of all the aims of this science. Moreover, a comprehensive study of this will enable him to grasp all the areas of thought within it.

Stressing the concern for organization and clear presentation, he goes on to say that "every science where the student cannot get at its crucial points and foundations at the outset leaves him no chance of attaining its inner secrets and aspirations."[13]

How then did Ghazâlî construct his book? And was he original or influenced by a predecessor? In *Iḥyâ' 'Ulûm al-Dîn*, for example, Ghazâlî divides his book into four quarters—*'Ibadât, mu'âmalât, munjiyât, and muḥlikât*—and each of these into ten *kitâbs*. Thus, it seems very likely that Ghazâlî, in dividing *al-Mustaṣfâ* into four poles or spheres, was influenced by the same impulse operating in the design of the *Iḥyâ'*, namely the mystical inclination. Indeed, in *al-Mustaṣfâ* he not only maintains the

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[12] Ghazâlî, *al-Mustaṣfâ*, 1:3-4.

[13] Ghazâlî, *al-Mustaṣfâ*, 1:4.

quadripartite division but calls each section a *quṯb*, a term that aids him linguistically and in its *ṣûfî* connotation. On the one hand, it denotes a pole around which things are drawn out of some common attractive force or magnetic quality. Thus each *quṯb*, in Ghazâlî's view, is a natural axis with particular elements that necessarily revolve around it. On the other, it corresponds to the four poles of the mystical hierarchy in the vocabulary of *taṣawwuf*.[14] But whether or not Ghazâlî was following the pattern of the *Iḥyâ'*, it seems very clear that none among the many works of the early centuries of Islam employ the unique construction that Ghazâlî uses in his remarkable *al-Mustaṣfâ min 'Ilm al-Uṣûl* (*The Quintessence of the Science of the Principles*).

THE STRUCTURE OF *AL-MUSTAṢFĀ*

Ghazâlî begins *al-Mustaṣfâ* with a concise Exordium that is, again, unprecedented in the writings of *uṣûl* before him. It resembles a detailed proposal that maps out the construction of the work and seeks to orient the reader of *uṣûl* within the realm of the Islamic sciences in general, covering several broad topics:

- The meaning and definition of *uṣûl al-fiqh*
- Its rank with reference to the other Islamic sciences
- The wisdom behind dividing the subject into four *Quṯbs* and an Introduction

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[14]*The Shorter Encyclopaedia of Islam*, 1953 ed., s.v., "Taṣawwuf."

- The manner in which the *uṣûlî* issues are subsumed under the four Poles

- The utility of the Introduction and its relationship to the science of the principles

Ghazâlî begins with the linguistic and technical definition of *fiqh* with the purpose of distinguishing the *faqîh* first from the *uṣûlî* and second from the specialists of other fields of inquiry, such as *kalâm*, philosophy, language, and so on. He explains that the scope of the *faqîh* is limited to identifying 'what' the practical details of the *Sharî'a* rules are, while the concentration of the *uṣûlî* includes specifying the *Sharî'a* sources as to 'how' they impart rules.[15]

But in clarifying the position of *uṣûl* in man's inquiry, Ghazâlî first distinguishes between the natural and the religious sciences, then analyzes the latter into the universal and the particular. The only universal religious science, he continues, is *kalâm*. In his own words:

> The *mutakallim* . . . inquires into the most general of things, namely existence. He first divides existents into those that are eternal and those that are originated. He then divides the originated into substances and accidents. . . . Next he focuses on the Eternal being, explaining that He can be neither multiple nor divisible. . . . He must be 'one,' distinguished from originated beings by certain attributes. . . . This universe is His possible act. . . . Also, sending messengers is among the possible acts on his part. He is capable of . . . demonstrating their truthfulness through miracles. Furthermore, this

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[15]Ghazâlî, *al-Mustaṣfâ*, 1:4-5.

> possible [act] has occurred.[16]

Here the investigation of the *mutakallim* ceases and his rational inquiry stops, for

> reason can lead one to the truthfulness of the Prophet but then abdicates itself, acknowledging that it receives with acceptance from the Prophet what he says concerning Allâh, the Last Day, and other things that reason cannot independently comprehend.[17]

The *faqîh* picks up at this point, characterizing human acts with respect to lawfulness and unlawfulness. Finally, the *uṣûlî* examines what the Messenger has brought and inquires as to how to impart *Sharî'a* rules from these sources, explicitly or implicitly. Here also begins the work of the commentator on the Qur'ân and the traditionist in explaining and transmitting the *Sharî'a* texts and authenticating them.

But *kalâm*, being the science through which reason establishes the authority of the *Sharî'a* and the truthfulness of the Messenger, is the inquiry of the highest rank.[18] However, Ghazâlî does not require the *faqîh*, the *uṣûlî*, nor the other specialists of the particular religious sciences to master *kalâm* and its issues and proofs. He holds that it is sufficient for both the *uṣûlî* and the *faqîh* to follow the *mutakallim* insofar as accepting the conclusions of his

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[16]Ghazâlî, *al-Mustaṣfâ*, 1:5-6.

[17]Ghazâlî, *al-Mustaṣfâ*, 1:6.

[18]Ghazâlî, *al-Mustaṣfâ*, 1:7.

inquiry. Thus, they base their research upon his findings in identifying the *Sharî'a* sources, where the *uṣûlî*, elucidates origins of the *aḥkâm* and the *faqîh* focuses on the details of these *aḥkâm*.

Praising the study of *kalâm* leads Ghazâlî to extol the virtues of another branch of study closely associated with it, logic. Therefore, he commits a relatively lengthy introduction to its summary primarily drawn from his previous works *Mihakk al-Naẓar wa Mi' yâr al-'Ilm*, contending that logic was necessary not only for the disciplines of *kalâm* and *uṣûl* but rather for all sciences. For "whosoever does not acquire it, his knowledge cannot be trusted at all."[19] This has instigated attack by various *muḥaddiths* and the Ḥanbalites, such as b. Salâḥ and b. Taymiyya. Yet Ghazâlî influenced nearly all *uṣûlî* work after him.[20]

Despite the fact that he has explained the use of this introduction in defining the terminologies of *uṣûl* by discursive argument, he immediately retracts to its usage, criticizing those *uṣûlî* authors who are overwhelmed by *kalâm* to the extent that they litter *uṣûl* with its discussions and problems, just as those who are infatuated with *fiqh* cloud it with details of Law, and as

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[19]Ghazâlî, *al-Mustaṣfâ*, 1:10.

[20]One can hardly find an *uṣûlî* work written based on the *mutakallimîn* approach (as well as some Ḥanafite books) that is not intertwined with the issues of logic or influenced by its style. Even b. Qudâma al-Ḥanbalî, who 'relied' heavily on *al-Mustaṣfâ* in his book *Rawḍat al-Nâẓir*, summarizes Ghazâlî's introduction, which invited much criticism from loyalist Ḥanbalites. 'Abd al-Qâdir b. Aḥmad Ibn Badrân, *al-Madkhal ilâ Madhhab al-Imâm Aḥmad b. Ḥanbal* (Damascus: Dâr Iḥyâ' al-Turâth al-'Arabî, n.d) p. 464.

grammarians tend to reduce its discourse to matters of language.

It is astonishing, however, that after bringing this excess to our attention, he concedes that *al-Mustasfâ* should not be devoid from such discussion so that people will not be alienated, "for weaning one from what he is accustomed to is difficult, and human minds shun the novel."[21] Yet it is lamentable that the great Ghazâlî yielded to this pressure.

The Secret of the Qutbs

Since *usûl al-fiqh* aims toward knowing how the *Sharî'a* rules are extracted from the sources, it is necessary according to Ghazâlî for the discussion to focus on (1) the *ahkâm* (the rules), (2) the *adilla* (the sources), (3) the method of extracting the rules from the sources, and (4) the qualifications of the one who performs this operation. To make the functional relationship between these concepts and activities more accessible to the reader, Ghazâlî offers the '*thamara* metaphor.' The *Sharî'a* rules are the fruit (*thamr*), each requiring, of course, a source of fruition (*muthammir*), gleaning, (*turuq al-istithmâr*), and finally a harvester (*mustathmir*).

Al-Muthammir: The ultimate source of the *ahkâm's* fruition is God. However, He set them forth in the *adilla*, namely the Qur'ân, the *Sunna*, and *Ijmâ'*. Thus, they are the fruit-bearing vessels. Ghazâlî places their discussion in the Second *Qutb*.

Turuq al-Istithmâr: The means by which the rules are gleaned are the indications of the *Sharî'a* texts, which may be

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[21]Ghazâlî, *al-Mustasfâ*, 1:10.

explicit, implicit, or based on rational inference. Therefore, the thrust of the Third *Quṯb*, where this inquiry occurs, is linguistic, focusing on the interpretation of these texts.

Al-Mustathmir: The harvester culls the rule by the appropriate means in accordance with the corresponding *Sharî'a* sources. Ghazâlî of course is referring to the *mujtahid* and maintains that it is necessary to know such a person's description and conditions, and further characterizes him relative to those who must follow him, namely the *muqallids*. This discourse takes place in the Fourth *Quṯb*.

This, then, elucidates Ghazâlî's thinking on the 'organic structure' of *uṣûl*, a nature he seeks to mirror in *al-Mustaṣfâ'*. For his premise is that the "body of the principles of jurisprudence revolve around four *axes*":

> The First *Quṯb* concerns the rules—and it is best to start with them, for they are the desired effect. The Second *Quṯb* regards the sources: The Book, the *Sunna*, and *Ijmâ'*; and they come next, for after having known the fruit there is nothing more important than to know the source of fruition. The Third *Quṯb* focuses on the method of their utilization, namely the manners in which proofs yield their indications. . . . The Fourth *Quṯb* [assesses] the harvester, that is, the *mujtahid*, who rules on the basis of his speculation. Corresponding to him is the *muqallid*. . . . Therefore, it is necessary to discuss the conditions of the follower and the *mujtahid* and their qualifications.[22]

After giving the rational for dividing the subject into four *quṯbs*, Ghazâlî goes on to explain how the *uṣûlî* issues are subsumed under

[22]Ghazâlî, *al-Mustaṣfâ*, 1:8.

each *quṭb* and surveys their topics.

A Descriptive Outline of al-Mustaṣfâ

The First *Quṭb*: Ghazâlî divides this into four aspects (*funûn*, pl. of *fann*):

In Aspect One, he examines the essence of 'rule,' which includes an opening definition and three discussions: (i) *Taḥsîn* and *taqbîḥ*, the declaring of 'good' and 'bad' based on reason (*al-Mustaṣfâ*, 1:56-61); (ii) the necessity of gratitude toward God (*al-Mustaṣfâ*, 1:61-63); and (iii) the status of rules before the coming of revelation (*al-Mustaṣfâ*, 1:63-65).

Aspect Two contains the division and characterization of the *Sharî'a* rules into five categories (*al-Mustaṣfâ*, 1:65-67). Ghazâlî then devotes fifteen discussions to their more detailed description with reference to human acts and one another (*al-Mustaṣfâ*, 1:67-82).

In Aspect Three he analyzes the concept of 'rule,' which he holds to be composed of four constituents, namely the Ruler, the rule itself, the locus of obligation, which he divides into two discussions (*al-Mustaṣfâ*, 1:84-86), and human acts, to which he allots five discussions (*al-Mustaṣfâ*, 1:86-93).

Aspect Four is composed of four *faṣls*,[23] the first of which discusses *asbâb* (causes) for the performance of an act (*al-*

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[23]When there are no discussions, Ghazâlî tends to use the term '*faṣl*, which I choose to translate as 'section.' It constitutes a longer discourse on a given topic.

Mustasfâ, 1:93-94) The validity of acts versus their invalidity is the subject of the second *fasl* (*al-Mustasfâ*, 1:94-95), while their timely (*adâ'*), restitutive (*qadâ'*), and repeated (*i'âda*) performance is investigated in the third (*al-Mustasfâ*, 1:95-98). Here, however, Ghazâlî introduces a new division in *al-Mustasfâ's* structural organization, '*daqîqa*' ('A Subtle Point'). It does not constitute a chapter, nor is it a discussion by itself; rather, it is simply a relatively lengthy point that he wishes to stress (*al-Mustasfâ*, 1:96-97). The fourth and final *fasl* addresses the concepts of resolution (*'azîma*) and concession (*rukhsa*). (*al-Mustasfâ*, 1:98-100.)

This ends Ghazâlî's First *Qutb*, which is, incidentally, nearly equivalent in length to the fourth one, both of which are comparatively shorter than the middle two.

The Second *Qutb*: Ghazâlî divides this according to the four Principles (*usûl*): The Qur'ân, including abrogation (*naskh*); the *Sunna* (Prophetic tradition); *Ijmâ'* (Consensus); and *Istishâb*.

Qur'ân, the First Principle: His treatment of the Qur'ân contains four partitions, which he calls 'Considerations' (*anazâr*, pl. of *nazar*). The First Consideration elucidates the meaning of *kalâm Allâh*. This has a brief *fasl* on the unicity of divine speech (*al-Mustasfâ*, 1:100-101).

The Second Consideration delves into the definition of the Qur'ân, followed by two discussions. The first examines the recitations(*qirâ'ât*) that have not been transmitted through *tawâtur*. The second, which is considerably longer, looks at the status of *basmala*, the formula *Bismillâh al-Rahmân al-Rahîm* (*al-*

Mustasfâ, 1:101-105).

The Third Consideration comments on the vocabulary of the Qur'ân, inquiring into its Arabicity and the clarity or ambiguity of its words and expressions, which entails three discussions (*al-Mustasfâ*, 1:105-107).

The Fourth Consideration is a concise summary of the various methods of the Book's interpretation. But he refers the reader here to the Third *Qutb's* elaborate treatment of the various approaches to the Qur'ân's interpretation.

Finally, he justifies his departure from classical *usûlî* scholarship in placing the discourse on abrogation (*naskh*) before the second principle, the *Sunna*, instead of directly after. For, in his view, it is closely associated with the topic of divine speech and, therefore, more appropriately attached to examination of the Qur'ân (*al-Mustasfâ*, 1:107).

He employs the term '*kitâb*' (*book*) as a major partition to introduce *Naskh*, dividing it into two *bâbs* (chapters) and a conclusion.

Chapter One has three *fasls*: (i) the definition and the essence of abrogation (*al-Mustasfâ*, 1:107-111); (ii) the establishment of abrogation and refutation of its deniers (*al-Mustasfâ*, 1:111-112); and (iii) six discussions on the nature and conditions of abrogation (*al-Mustasfâ*, 1:112-121).

In Chapter Two, he analyzes the constituents of abrogation in an introduction and six discussions on its stipulations and requirements (*al-Mustasfâ*, 1:121-128).

Ghazâlî's conclusion to the Book of Abrogation is a summary

treatment of the 'time of revelation' as a means of distinguishing the abrogating text from its abrogated counterpart (*al-Mustasfâ*, 1:128-129).

Sunna, the Second Principle: Ghazâlî's opening discourse (*al-Mustasfâ*, 1:129-132) introduces the various terminologies used by the Companions in transmitting *hadîth*. He then divides the inquiry proper into two main parts, the first (*al-Mustasfâ*, 1:132-145) consisting of three chapters and the second of four (*al-Mustasfâ*, 1:145- 173).

Chapter One of Part One is devoted to the concept of *tawâtur* (*al-Mustasfâ*, 1:132-134), while Chapter Two focuses on the requirements of *tawâtur* and is composed of five discussions covering the number of transmitters, circumstantial evidence, the nature of knowledge imparted by a *mutawâtir* report, etc. Ghazâlî closes with a segment summarizing invalidating conditions for *tawâtur* (*al-Mustasfâ*, 1:139-140). Finally, Chapter Three (*al-Mustasfâ*, 1:140-145) divides reports into three categories with reference to their acceptance and rejection.

Part Two treats solitary (*ahâd*) reports in four chapters.

The first *bâb* establishes the validity of laying a *Sharî'a* obligation on the basis of a solitary report, which includes four discussions (*al-Mustasfâ*, 1:145-155).

Chapter Two analyzes the conditions and characteristics of transmitters in two discussions, regarding integrity and the testimony of a *fâsiq* (heretic), (*al-Mustasfâ*, 1:155-161).

A summary conclusion is followed by Chapter Three, which

inquires into *al-jarḫ wa ta'dîl* (impugnment and attestation) in four *faṣls* (*al-Mustaṣfâ*, 1:162-165). The first of them studies the required number for the endorsing of a witness; the second peruses the cause for their endorsement or discrediting; the third scrutinizes the cause for endorsement itself; and the fourth concerns the trustworthiness of the Companions.

Chapter Four considers the valid channels of reporting, including seven discussions that inspect the different ways of obtaining and conveying a report (*al-Mustaṣfâ*, 1:165-173).

Ijmâ', the Third Principle: This discourse is composed of three chapters (*al-Mustaṣfâ*, 1:173- 217).

The First *Bâb* seeks to establish *ijmâ'* as a valid *Sharî'a* source (*al-Mustaṣfâ*, 1:173-181). Here Ghazâlî introduces a new structural device, *maslak* (approach). Thus, Chapter One contains three such explanatory approaches where his defense of *ijmâ'* is argued in detail.

Chapter Two introduces the constituents of *ijmâ'*. The First Constituent examines in eight discussions those who compose and effect consensus (*al-Mustaṣfâ*, 181-191). The Second Constituent is *ijmâ'* itself. It is viewed in three discussions (*al-Mustaṣfâ*, 1:191-198).

Chapter Three details the status of *ijmâ'* in seven discussions(*al-Mustaṣfâ*, 1:198-217).

Istiṣḫâb, the Fourth Principle: Ghazâlî treats this principle in one unit, explaining first the position of Reason in the *Sharî'a* and

then four kinds of *istiṣḥâb* . With this he concludes what are in his view the valid *Sharî'a* sources. Finally, he closes with a statement on the four invalid *Sharî'a* sources, which brings the Second *Quṭb* to completion (*al-Mustaṣfâ*, 1:217-245).

The Third *Quṭb*: Ghazâlî divides this into an opening and three parts, discussing how the *Sharî'a* rules are extracted from the principal sources (*al-Mustaṣfâ*, 1:245-3).

Part One surveys the textual indications or proofs in an introduction and seven *faṣls* that inquire into language and the validity of applying *qiyâs*, to it (*al-Mustaṣfâ*, 1:317-345). Next, he devotes four sections (*aqsâm*, pl. of *qism*) to (1) texts categorized as *al-mujmal wa al-mubayyan* (the obscure and the elucidated), which is comprised of six discussions (*al-Mustaṣfâ*, 1:345-384); (2) those classified as *al-Ẕâhir wa al-Mu'awwal* (the evident and the interpreted), which includes ten discussions (*al-Mustaṣfâ*, 1:384-411); (3) *al-Amr wa al-Nahî* (the imperative and prohibitive moods), which he discusses under two separate *maslaks* (*al-Mustaṣfâ*, 1:411-2:32); and (4) *al-'Āmm wa al-Khâṣṣ* (the general and the particular) statements, which is divided into five chapters. The first identifies general *Sharî'a* statements. (*al-Mustaṣfâ*, 2:32-186).

Part Two (*al-Mustaṣfâ*, 2:186-228) scrutinizes the explicit and implicit indications of the *Sharî'a* texts, which he divides into five *ḏarbs* (types) (*al-Mustaṣfâ*, 2:186-204). He follows with an elaborate statement on *dalîl al-khiṭâb* (the indications of the *Sharî'a* address) and the legal status of the prophetic acts, which he

discusses in three chapters (2:212-228)

Part Three (*al-Mustasfâ*, 2:228-350) delves into *qiyâs*. It begins with two preliminary openings that define analogical reasoning followed by four chapters. The first establishes its validity as an instrument that aids in arriving at the *Sharî'a* rules. Ghazâlî commits seven arguments against those citing certain *Sharî'a* texts as proof for the invalidity of *qiyâs*, and six in refuting 'the Assassins,' who deny analogical reasoning on rational grounds (*al-Mustasfâ*, 2:234-278).

Chapter Two details the manner in which the cause of the principle is founded, based on *Sharî'a* text, *Ijmâ'*, or Reason (*al-Mustasfâ*, 2:278-310), while Chapter Three takes up *qiyâs al-shabah* (the analogy of resemblance) (*al-Mustasfâ*, 2:310-325). Finally, Chapter Four analyzes the four components of *qiyâs* and their stipulations. Ghazâlî then concludes with an inquiry into determining the *'illa* (underlying cause) (*al-Mustasfâ*, 2:325:350).

The Fourth *Qutb*: This has three parts, where the status of the *mujtahid* is considered.

Part One examines the constituents of *ijtihâd* and the latter's requirements, as well as the requirements of the *mujtahid* and the liability of his judgements to error. Ghazâlî goes on to address the question of the permissibility of the personal *ijtihâd* of the Prophet or the Companions during the Prophet's lifetime (*al-Mustasfâ*, 2:350-387).

Part Two regards the condition of *taqlîd* (blind imitation) and *istiftâ'* (the seeking of *Sharî'a* opinion) (*al-Mustasfâ*, 2:387-

392). He continues his argument against the Assassins for their claim of following their Imâms. He further assails blind imitation, but requires the masses to follow the opinions of the scholars.

Part Three Ghazâlî devotes to the apparent conflicts between the *Sharî'a* sources and the manners of reconciling these discrepancies (*al-Mustasfâ*, 2:392-398). He divides this into three preliminary introductions and two chapters. The First *Bâb* addresses the method of recognizing the preponderance of some reports over others (*al-Mustasfâ*, 2:395-398). The Second *Bâb* examines the *Sharî'a* means of ascribing precedent to certain legal causes over and against others (*al-Mustasfâ*, 2:398).

With this, Ghazâlî concludes the fourth and final *qutb* of his great legal work, *al-Mustasfâ min 'Ilm al-Usûl.*

THE STYLE OF *AL-MUSTASFĀ*

In reading *al-Mustasfâ*, one must keep in mind that Ghazâlî is intensely concerned about the learning and qualifications of his audience, classifying them into three categories: The masses, the elite, and a middle category, whose constituents have not acquired enough knowledge to elevate themselves to be among the principles, but who are distinguished in learning from the masses. He calls this middle category *ahl-al-Shaghab*, 'the people of argument.'[24]

As for the masses, Ghazâlî says they should be preached to in a way that indicates the facts plainly without sophistication or

[24]Ghazâlî, *Al-Qistâs al-Mustaqîm*, p.86.

argumentation. The middle class, on the other hand, should be invited gently to the truth, devoting special attention to the essentials and fundamentals to which they concede. From here, one should proceed to demonstrate the truth by way of balanced, rational proof.[25]

As for the elite, Ghazâlî requires of them three conditions. First, they must be naturally gifted with penetrating insight and strong rational ability for comprehension, which he believes cannot be acquired through learning and training; rather one is born with these potentialities. Second, he requires them to believe in their teacher as possessing these capabilities; for, as he puts it, "Whosoever doubts that you know mathematics, cannot learn it from you."[26] The third quality that they must have is freedom from blind imitation and prejudice, whether based on popular opinion or previous unfounded notions; for these prevent one from seeing the plain truth.[27]

In my judgement, Ghazâlî has written *al-Mustaṣfâ* for this last group, though it is not unlikely that he held that his opponents, including the Mu'tazilites and others, were from the second category, 'the people of argument.' For we notice that his method of argumentation against them is to first expose their essential

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[25]'Abd al-Karîm al-'Uthmân, *Sîrat al-Ghazâlî*, p.37.

[26]al-'Uthmân, *Sîrat al-Ghazâlî*, p.37.

[27]al-'Uthmân, *Sîrat al-Ghazâlî*, p.37.

principles and then refute them.[28]

Ghazâlî's language in *al-Mustasfâ* is marked by frequent use of the *usûlî* terminology that has been employed by the jurists preceding him, as well as the vocabularies of *fiqh* and *kalâm*. The elegant and personalized style of *Ihyâ'* and *al-Munqidh min al-Dalâl* is echoed in few places in *al-Mustasfâ*, where conciseness and precision take precedent over beauty and wit, to the extent that he is difficult to understand in some places.[29] Also, he assumes his reader to be competently aware of the Qur'ân and a good number of *hadîth*, for he routinely cites only parts of them.

The Language of al-Mustasfâ

Among the frequent expressions that he uses to convey his or others' opinions are the following:

- ***Wa hâdhâ al-'awlâ***—This is more adequate, appropriate, worthier.[30]

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[28]Ghazâlî's discussion on revelation versus reason is a good example of this approach.

[29]One observes, for example, that in *Kitâb al-Naskh* Ghazâlî's treatment is more complex and closer to the spirit of *kalâm* than in his general discourse on *ahkâm*, where he is clear and precise with the exception of those places where he argues against the Mu'tazilites.

[30]Ghazâlî, *al-Mustasfâ*, 1:71.

- *Al-'awlâ*—What is more appropriate, adequate.[31]
- *Wahtaraznâ*—We have guarded against, stipulated.[32]
- *Kashf al-ghitâ'*—Unveiling [this question]; to shed light.[33]
- *Wa'l-mukhtâr*—The preferred opinion, choice opinion.[34]
- *Fi'l-mas'ala madhhabân da'îfân*—With reference to the question there are two weak positions.[35]
- *Yuhtamalu 'an yuqâl*—It is possible to say.[36]
- *Wa yumkinu an yujâb*—It is possible to answer.[37]
- *Wa al-sahîh*—What is correct is . . .[38]
- *Wa al-mu'tamad 'indanâ*—What is acceptable to us.[39]

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[31]Ghazâlî, *al-Mustasfâ*, 1:73.

[32]Ghazâlî, *al-Mustasfâ*, 1:74.

[33]Ghazâlî, *al-Mustasfâ*, 1:75.

[34]Ghazâlî, *al-Mustasfâ*, 1:87, 233.

[35]Ghazâlî, *al-Mustasfâ*, 1:97.

[36]Ghazâlî, *al-Mustasfâ*, 1:96, 188.

[37]Ghazâlî, *al-Mustasfâ*, 1:97.

[38]Ghazâlî, *al-Mustasfâ*, 1:90 .

[39]Ghazâlî, *al-Mustasfâ*, 1:187.

- ***Wa hâdhâ fâsid***—And this is corrupt, invalid.[40]

- ***Wa qad afsadnâh.*** And we have refuted it.[41]

- ***Wa huwa taḥakamun la dalîla 'alayh.***—. This is a baseless, arbitrary opinion that has no proof.[42]

- ***Wa yastḥîl bi ḥukm al-'âda.***— It is impossible in the nature of the case.[43]

- ***Wa hâdhâ al-taḥqîq***—And this is the investigated position.[44]

- ***Alladhî uqṭa'u bîh***—What is certainly decisive is . . . [45]

- ***Wa huwa al-ṣaḥîḥ***—And this is correct.[46]

In introducing most of his opinions, Ghazâlî's style is one of dialectic argument, where the phrases *If it is said* and *We shall say* preface his opponents' positions and his responses, respectively. This style appeared in the third century and became popular in the books of *kalâm* and *uṣûl*, and ultimately won over as the prevailing

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[40]Ghazâlî, *al-Mustaṣfâ*, 1:188.

[41]Ghazâlî, *al-Mustaṣfâ*, 1:187.

[42]Ghazâlî, *al-Mustaṣfâ*, 1:187.

[43]Ghazâlî, *al-Mustaṣfâ*, 1:189.

[44]Ghazâlî, *al-Mustaṣfâ*, 1:191,197.

[45]Ghazâlî, *al-Mustaṣfâ*, 1:241.

[46]Ghazâlî, *al-Mustaṣfâ*, 1:239.

method of written argumentation.[47]

Although in his introduction Ghazâlî promises to be brief without hindering meaning, he is noticably elaborate in presenting the facets of various *uṣûlî* opinions, especially regarding the Mu'tazilites. Yet throughout these discussions he tends to avoid semantic arguments, stressing the importance of grasping the real meanings where *uṣûlîs* agree and disagree. He says in cautioning against matters of semantics that one should

> know that whosoever seeks the real meanings from mere words will go astray and perish, just as one who turns his back to the West—though it is the West that he seeks—[will stray and perish]. But whosoever seeks meaning in his mind first, and thus allows words to follow meanings, is guided.[48]

This explains his approach in treating the major aspects of *al-Mustaṣfâ* by first categorizing their subjects and the discussions they entail and then defining their meanings.

For example, in the First *Quṭb*, devoted to the *aḥkâm*, he begins by dividing the discourse into four parts: The essence of rules; their classification; their essential constituents; and that

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[47]See for example al-Shâfi'î, *Risâla*, pp. 41, 45, 108, 109, 110, 228, 229, 230, 231, 232, 233, 234, 235, etc.; Abû al-Ḥusayn al-Baṣrî, *al-Mu'tamad*, 2:459, 460, 461, 462, 464, 465, 466, 467, 468, 469, etc.; Juwaynî, *al-Burhân*, 1:85, 93, 96, 98, 106, 110, 112, etc.; Ibn Ḥazm, *Iḥkâm fî Uṣûl al-Aḥkâm*, 1:68, 69, 71, 83, 87, 90, etc.; Abû Isḥâq al-Shirâzî, *al-Tabṣira fî Uṣûl al-Fiqh*, pp. 18, 19, 20, 21, 23, 24, 25, etc.; Abû Khaṭṭâb al-Klûdhânî [Hanbalite], *Kitâb al-Tamhîd*, 1:30,38, 39, 41, 75, 79, etc.

[48]Ghazâlî, *al-Mustaṣfâ*, 1:21.

which manifests them. Furthermore, in his writing of Parts One and Two he commences with introductory statements followed by separate discussions for each element under analysis. Moreover, he leaves no term without defining it, not only as it is understood in the vocabulary of the *uṣûlîs*, but in its general linguistic sense, and in other usages that may exist for it. His definition for *ijtihâd*, for instance, begins with its meaning in language:

> *Ijtihâd* is an expression of exerting efforts and exhausting one's capacity and capability in doing an action, and [the term] is used only in regard to that which involves exertion and effort. Hence, it is said "He exerted [himself] in carrying the millstone"; though it cannot be said, "He exerted [himself] in carrying a single grain." But in the technical usage of the *'ulamâ'*, the term became specific to the maximum exertion of a *mujtahid* in seeking out the knowledge of the *Sharî'a* rules.

Al-Mustaṣfâ is also a valuable source for its detailing of the opinions of other legal and theological schools, such as the Mâlikites, the Ẕâhirites, and the Ḫanafites, as well as those of the Mu'tazilites. Further, it is important to note that Ghazâlî's discourse in *al-Mustaṣfâ* is much less offensive and more objective than his treatment in *al-Mankhûl*. For example, though he criticized Abû Ḫanîfa harshly in the latter (following his teacher al-Juwaynî in *al-Burhân*), his name is not mentioned in *al-Mustaṣfâ* without the invocation of *taraḫḫum*, that is, the saying of "May Allâh have mercy upon him." Yet Ghazâlî did not concern himself much with the *uṣûlî* opinions of the Ḫanbalites, perhaps because their contribution to the science came relatively late, or he may have been convinced that Aḫmad b. Ḫanbal was, as al-Ṯabarî had

declared, primarily a *muhaddith*, not a *faqîh*.[49]

The Influence of al-Mustasfâ

Long after Ghazâlî, *al-Mustasfâ* continued to exert a shaping influence on the science of the principles of Law and command great respect in *usûlî* circles.[50] Both Fakhr al-Dîn al-Râzî (d. 606/1210) in *al-Mahsûl*[51] and Sayf al-Dîn 'Alî b. Muhammad al-Amidî (d. 631/1233) in *Ihkâm fî Usûl al-Ahkâm*.[52] relied heavily upon the past master's work. In fact, numerous scholars abridged or wrote commentaries on it. Among those who abridged the book

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[49]This statement earned al-Tabarî the displeasure of the Hanbalite; see al-Baghdâdî, *Târîkh Baghdâd*, 2:164.

[50]Fakhr al-Dîn al-Râzî (d.606 H) has mentioned that on one of his journeys he visited Tûs and saw many students of *usûl* "investing their lives" in the study of *al-Mustasfâ*. Râzî debated some of Ghazâlî's views on *usûl*, especially the issue of prayer in a usurped home (*al-Mustasfâ*, 1:79-81) and criticized Ghazâlî's opinion. Fath Allâh Khulayf, *Munâzarât Fakhr al-Dîn al-Râzî fî mâ warâ' al-Nahr*, (Beirut: Dâr al-Mashriq, n.d.), pp. 45, 47.

[51]Tâhâ Jâbir in his valuable study on al-Râzî and his *usûlî* opinions contends that, in addition to memorizing *al-Mustasfâ*, Râzî relied heavily on it, along with *al-Mu'tamad*, in the writing of *al-Mahsûl*. al-Râzî, *al-Mahsûl*, 6 vols. ed. Tâhâ Jâbir, (Riyad: Imâm Muhammad b. Sâ'ûd University, 1979), 1:39.

[52]Both the works of al-Râzî and al-Amidî have been abridged. For example Tâj al-Dîn al-Armawî (d. 656 H) abridged *al-Mahsûl* in his book *al-Hâsil*. Also *Sirâj al-Dîn al-Armawî* (672 H) abridged *al-Mahsûl* in *al-Tahsîl*. From these two books al-Badâwî (685 H) produced his very concise *Minhâj al-Wusûl ila 'Ilm al-Usûl*, which many commentaries have been devoted to until modern times. Muhammad Mustafa Shalabî, *Usûl al-Fiqh al-Islâmî*, pp. 42-43.

are the following:

- Abû al-Walîd b. Rushd (d. 595/1198), *Mukhtasar al-Mustasfâ fî al-Usûl.*[53]

- Abû al-'Abbâs Ahmad b. Muhammad al-Asdî al-Ishbîlî b. al-Hâj (d. 647/1249), *Mukhtasar al-Mustasfâ wa Hawâshî 'alâ Mushkilâtihî.*[54]

Others who wrote commentaries on *al-Mustasfâ* include:

- Abû 'Alî Husayn b. 'Abd al-'Azîz Al-Fihrî al-Balansî (d. 679/1280).[55]

- Abû Ja'far Ahmad b. Muhammad b. 'Abd al-Rahmân b. Mas'ûd al-'Amirî al-Ghirnâtî (d. 699/1299).

- Zayn al-Dîn Surayjâ b. Muhammad al-Maltî (d. 788/1386), *Mustaqsa al-Wusûl ila Mustasfâ al-Usûl.*[56]

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[53]al-Marâghî, *al-Fath al-Mubîn fî Tabaqât al-Usûliyîn*, p. 39.

[54]Khalîfa, *Kashf al-Zunûn*, 2:1673.

[55]Khalîfa, *Kashf al-Zunûn*, 2:1673; and 'Izz al-Dîn Ibn al-Athîr, *al-Lubâb fî Tahdhîb al-Ansâb*, 3 vols. (Beirut: Dâr Sâdir, 1980), 1:176.

[56]Khalîfa, *Kashf al-Zunûn*, 2:1675.

Ibn Qudâma's Questionable use of al-Mustaṣfâ in Rawḏat al-Nâẕir

Among those who were influenced by *al-Mustaṣfâ* is the notable Ḫanbalite jurist Muwaffaq al-Dîn 'Abd Allâh b. Aḫmad b. Qudâma (d. 620/1223). Although he does not explicitly state that he relied principally on Ghazâlî in the writing of *Rawḏat al-Nâẕir wa Junnat al-Munâẕir*,[57] close scrutiny of both the structure and the *uṣûlî* methodology reveals clearly that b. Qudâma's work is, in essence, an abridgement of *al-Mustaṣfâ*, where he copies abundantly from the latter—often verbatim (to the degree that he must be admired at least for his boldness in neglecting the traditional hostility harbored by the Ḫanbalites toward discussions of *kalâm* and issues of logic).[58] By 'summarizing' Ghazâlî's introduction to logic in the beginning of *Rawḏat al-Nâẕir*, he brought the wrath of his Ḫanbalite contemporaries upon himself,

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[57]The book *Rawḏat al-Nâẕir* has been printed four times: 'Abd al-Qâdir Muṣtafa b. Badrân, *Nuzhat al-Khâṭir al-'Aṭir Sharḫ Rawḏat al-Nâẕir wa Junnat al-Munâẕir*, 3 vols. (Beirut: Dar al-Kutub al-'Ilmiyya, n.d.); 2d edition 2 vols. ed. 'Abd al-'Azîz 'Abd al-Rahmân Sa'id, (Riyâḏ: University of Imâm Muḫammad b. Sa'ûd Press, 1979). One of them for the study and the second for the book; Ibn Qudâma, *Rawḏat al-Nâẕir wa Junnat al-Munâẕir* (Beirut: Dâr al-Maṭbu'ât al 'Arabiyya, n.d.).

[58]It is worthy of noting that Abû al-Faraj b. al-Jawzî, the Ḫanbalite (d. 597/1200) has patterned one of his books, *Minhâj al-Qâṣîdîn*, after Ghazâlî's *Iḫyâ'*. Ibn Qudâma has abridged *al-Minhâj* and called it *Mukhtaṣar Minhâj al-Qâṣidîn*. Since b. al-Jawzî's work is not available in its entirety, one cannot decisively determine whether b. Qudâma has exclusively relied on b. al-Jawzî's work or has used the *Iḫyâ'* in the abridgement because one finds similarity in the style of *Mukhtaṣar Minhâj al-Qâṣidîn* and that of Ghazâlî. A. Badawî, *Mu'allafât al-Ghazâlî*, p. 414-415.

forcing him in the end to omit this from later copies, although original manuscripts had already been circulated.[59]

The Hanbalite Najm al-Dîn al-Tûfî[60] (d. 716/1316), for example, has said of *Rawdat al-Nâzir* that "Ibn Qudâma has taken the chapters of *al-Mustasfâ* and altered them according to his liking, basing his book upon them." He goes on to say:

> He did not see the critical necessity for what Ghazâlî has cared [to do], that is, in subsuming the chapters under the *Qutbs* of the book *al-Mustasfâ*. Or [perhaps] he wanted to show the distinction between the two books through their structural differences so that [*Rawdat al-Nâzir*] would not be simply an abridgement or a summary [of *al-Mustasfâ*] since Ghazâlî was a Shafi'ite and an Ash'arite, while b. Qudâma was a Hanbalite and a Traditionist.[61]

In addition to al-Tûfî's observations, later authors have also acknowledged *Rawdat al-Nâzir's* indebtedness to *al-Mustasfâ*. 'Abd al-Qâdir b. Badrân (d.1346/1927), for example, in his commentary on the work writes that the "use of an introduction on logic is evidence that b. Qudâma has followed Ghazâlî." He adds that the former "was not considered to be of those engaged in logic and *kalâm* so that it could be argued that his intensive involvement

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[59]Consult 'Abd al-Qâdir b. Badrân's commentary on *Rawdat al-Nâzir*: *Al-Madkhal ilâ Madhhab al-Imâm Ahmad b. Hanbal*, p.464.

[60]For a brief biographical account, see Zirikly, *al-A'lâm*, 3:127-128.

[61]Tûfî's statement was cited by b. Badrân, *al-Madkhal ila Madhhab al-Imâm Ahmad b. Hanbal*, p. 463.

with these sciences compelled him to write this introduction."[62]

Also, a contemporary researcher, 'Abd al-Azîz 'Abd al-Rahmân al-Sa'îd, in his dissertation on b. Qudâma and his *usûlî* works affirms that "*Rawdat al-Nâzir* . . . is closely related to Ghazalî's *K. al-Mustasfâ* . . . . indeed, it branched from it, therefore [*al-Mustasfâ*] is generally its source."[63] Furthermore, he argues that b. Qudâma "brought nothing new to *usûl*, that is, original or different from the approaches of the *usûlî* scholars in general. Indeed, he was not innovative in this science at all, offering nothing unprecedented. Rather he was an imitator."[64]

Sa'îd, who is himself a Hanbalite, proceeds to point out b. Qudâma's deed, contending that the "trust of knowledge and accuracy in transmission required [b. Qudâma] to name the source which he drew from and the scholar whom he relied so heavily upon and to acknowledge the precedence and excellence of Ghazâlî in this field."[65-66]

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[62]Ibn Badrân, *Al-Madkhal ila Madhhab al-Imâm Ahmad b. Hanbal*, p. 464.

[63]al-Sa'îd, *Ibn Qudâma wa Athâruh al-Usûlîyya*, 1:118.

[64]al-Sa'îd, *Ibn Qudâma wa Athâruh al-Usûlîyya*, 1:115.

[65]al-Sa'îd, *Ibn Qudâma wa Athâruh al-Usûlîyya*, 1:151-152.

[66]al-Sa'îd mentions that b. Qudâma even in the few discussions where he differed with Ghazâlî, attempting to refute his opinions, does not explicitly cite him by name. He gives a number of examples. See his valuable discussion in *Ibn Qudâma wa Athâruh al-Usûlîyya*, 1:152. For more a detailed analysis, see the comparisons made between *al-Rawdat* and *al-Mustasfâ* in *Ibn*

Indeed, it is of little use to introduce passages of the two texts in order to demonstrate their essential similarity, for the whole of *Rawdat al-Nâzir* is quite obviously extracted from *al-Mustasfâ*, notwithstanding minor alterations and accommodations to some Hanbalite views.

THE DEVELOPMENT OF GHAZĀLĪ'S USŪLĪ THINKING

The prevalence of *taqlîd* (blind imitation) compelled those claiming affiliation with the established *fiqhî* schools to defend both the rectitude of their *madhhabs* and the honor of their *imâms*. Often, attacks were waged against the integrity of the competing schools and their founders and prominent figures. In the prime of his youth at the beginning of his training in Shâfi'ite *fiqh*, Ghazâlî did not escape this wave of rigid loyalty and, in fact, openly defended the necessity of "following an *imâm* and adhering to a model."[67] Moreover, he held, it was not necessary for the "common people or the *fuqahâ'* to follow the best among the *imâms*." In furthering this to its logical extreme, he arrived at the rather odd opinion that "whosoever is obliged to follow an *imâm* is not required to follow one of the Companions, such as Abû Bakr and 'Umar. In fact, this is not permissible for him."[68]

In *al-Mankhûl*, Ghazâlî writes pages defending the Shâfi'ite

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Qudâma wa Athâruh al-Usûlîyya, 1:118-165.

[67]Ghazâlî, *Mankhûl*, p. 488.

[68]Ghazâlî, *Mankhûl*, p. 494.

school—and its patriarch—which he had been indoctrinated into since early youth, eventually becoming one of its distinguished notables. In bolstering his defense, he often takes the offensive against one or another of the other *imâms*, particularly Abû Hanîfa.[69] But he concedes that his assailing of these imâms may seem to lack any explanation other than his overwhelming bias for his *fiqhî* school. So Ghazâlî appeals to those whom his positions reach to (1) not suspect him of prejudice and (2) free themselves from the influence of *taqlîd* and accept his positions against those of the other *imâms*, with the exception of al-Shâfi'î. In his words:

> One examining this chapter may think that we are biased toward al-Shâfi'î and enraged against Abû Hanîfa. . . . This is absolutely out of the question, for we are only fair and just . . . Whosoever doubts this must be fair and reevaluate his thinking and purge his heart from the polluting effects of habits and *taqlîd*, arresting his extreme prejudice to [Abû Hanîfa].[70]

Not surprisingly, Ghazâlî himself went through a "reevaluation" in *al-Mustasfâ* in rejecting *taqlîd* and attempting to be more objective in treating the various *usûlî* topics. Therefore, a selection showing the development of Ghazâlî's legal thinking between these periods in his life is in order. What follows is two excerpts on his treatment of one subject, the *mujtahid*. The first is from the threshold of his *usûlî* career, *al-Mankhûl*. The second is,

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[69]Ghazâlî, *Mankhûl*, pp. 496-504.

[70]Ghazâlî, *Mankhûl*, p. 504.

shall we say, from the mountain top, *al-Mustasfâ*. Nearly a quarter century passes between the two writings, where Ghazâlî, having ample time, opened to new horizons and freed himself from extreme bias for his school and even for his shaykh, al-Juwaynî. The following preliminary observations may help in comprehending and comparing the two texts.

- Ghazâlî's style in *al-Mankhûl* is very consise and brief and its content on the subject of the *mujtahid* does not exceed fifteen percent of that of *al-Mustasfâ*.

- In *al-Mankhûl* he focuses on the formalized personal and academic requirements of a *mujtahid*, while in *al-Mustasfâ* he concentrates on the scholarly ability and morality of a *mujtahid*, i.e., his adherence to Muslim ethics.

- He tends to be more rigid with the requriements of *ijtihâd* in *al-Mankhûl* than in *al-Mustasfâ*, where he classifies those requirements into minimum and maximum and purposely leaves room in between

- He encourages *ijtihâd* in *al-Mustasfâ*, stating that a *mujtahid* is not required to answer immediately every question posed to him. He cites Mâlik and al-Shâfi'î answering "I dont know" to certain questions.

- In *al-Mustasfâ*, Ghazâlî does not require the memorization of the entire Qur'ân nor the entire collections of *hadîth*. Rather he confines the verses pertaining to legal issues to nearly 500 and narrows down the number of *hadîth* to those relevant to legal issues, as well.

- Ghazâlî holds that the entirety of the requirements he specified are only required to the 'consummate *mujtahid*.' He also defends his position concerning the proportionality of *ijtihâd*, that is, it is possible for one who has not acquired all of the requirements of *ijtihâd* to examine issues within the range of his expertise, leaving what is beyond him to

others.

An Excerpt from al-Mankhûl

Let it be known first that the *fatwâ* is an essential pillar of the *Sharî'a*. No one disputes this. The Companions relied upon it after Allâh took the life of His Messenger, and their successors have followed these *fatâwa* until our time. Not everyone, however, can independently provide [*fatwâs*]; therefore, there must be characteristics and conditions for *mujtahids*.

Now, we have [various] ways of presenting this [issue]:

The first way: In general, we shall say a *muftî* is one who independently attains [facility with] the rules of the *Sharî'a*, both [with regard to learning] the texts and in [acquiring] the ability to extract them [*istinbâṯ*]. We refer by [the term] *text* to the Book and the *Sunna*, and by *istinbâṯ* to analogies and inferences.

The second way is to enumerate requirements [that the *mujtahid* must fulfill]: We shall say: [for a *mujtahid*], it is necessary to have reason [*'aql*] and to be of age, for a minor's statement is not accepted, nor is his report. But slavery does not violate [the condition of *ijtihâd*], nor does being female. There must [also] be conciousness of God [*war'a*], since an unrighteous person cannot be believed; that is, one cannot rely on his statement.

Furthermore, the science of language is necessary because the sources of the *Sharî'a* are conveyed through Arabic words; so he must independently understand Arabic. It does not suffice him to resort to books, for they do not indicate other than the [denotative] meanings of words. As for the connotative meanings, in context

and sequence, they are understood only by those who independently acquire the [language]. But deep awareness of rare linguistic issues is not required. The science of grammar, however, is necessary because from it stems most of the Qur'ân-related controversies.

Knowledge of those *ḫadîths* which pertain to certain *Sharî'a* rules is also necessary, as is knowing the abrogated and the abrogating text, awareness of the time [of abrogation] so that precedent [texts] are distinguished from their antecedents, knowing which *hadîths* are valid and which invalid; and knowing the biographies of the Companions and the positions of *imâms* so one does not violate *ijmâ'*.

Uṣûl-al-fiqh is [also] necessary because independent thinking is not possible without it. Nor [is it possible] without a genuine capacity to understand, for that is a natural characteristic, unattainable through training, which is required [for one] to know the *Sharî'a* rules.

The third way, which is preferred and sums up these details, is that [a *mujtahid*] should be of such character that it becomes easy for him to know the *Sharî'a* rules after he has feared God and come of age [so his statement is accepted]. Moreover, this character only becomes original through the fulfillment of all the details [we have laid before you]. But, of course, we do not require him to memorize the rules. The authorities of *hadîth*, for example, classified the Prophet's traditions, which are rules [of the *Shari'a*], distinguishing the authentic [*hadîth*] from the falsified. Consequently, relying on [*Sunan*] books is permissible, as we have

mentioned in the Book of Traditions.[71]

An Excerpt from al-Mustasfâ

The first part [of this discourse] concerns *ijtihâd* and examines [both] its essential constituents and rules. As for its constituents, they are three: The *mujtahid*, the subject of *ijtihâd*, and the *ijtihâd* itself.[72]

The first constituent concerns *ijtihâd* itself. *Ijtihâd* is an expression of exerting efforts and exhausting one's capacity and capability in doing an action, and [the term] is used only in regard to that which involves exertion and effort. Thus, it is said "He exerted [himself] in carrying the millstone"; while it cannot be said, "He exerted [himself] in carrying a single grain." But in the technical usage of the *'ulamâ'*, the term became specific to the maximum exertion of a *mujtahid* in seeking out the knowledge of the *Sharî'a* rules. The complete *ijtihâd*, then, is that a *mujtahid* exerts himself in seeking [an answer based on the *Sharî'a*] to the extent that he feels within himself the inability to seek more.

The second constituent is the *Mujtahid*. He has to meet two requirements: First, he must have an overall understanding of the *Sharî'a* as well as an awareness of the avenues leading to its knowledge. Furthermore, he must be able to use discursive thinking to examine [the *Sharî'a*], extracting what necessarily

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[71]Ghazâlî, *al-Mankhûl*, p. 465.

[72]Ghazâlî, *al-Mustasfâ*, 2:350-354.

preponderates and staying what must be withheld.

Second, he should be trustworthy, avoiding sins that injur credibility. But this is not required for the permissibility of relying on his *fatwâ*, for whosoever is not trustworthy, his *fatwâ* should not be accepted. This does not apply to him per se, however, for trustworthiness is a condition for accepting *fatwâ*, not a condition for validating *ijtihâd*.

If it is said: When a person masters the knowledge of the *Sharî'a* sources, what are the details of the sciences that are necessary to attain the rank of *ijtihâd?*

We shall say: A person who is capable of *fatwâ* [attains this rank] after he becomes familiar with the proper channels that produce the *Sharî'a* rules, and after knowing how [they] are extracted. The generative sources of rules as we have detailed them are four, the Book, the *Sunna*, *Ijmâ'* and 'Reason. In addition, the method for extracting rules is completed based on four sciences. Thus, two [sciences] are [required] initially, two in the end, and four are in the middle, totaling eight. Let us discuss them in detail, emphasizing a few subtler points that have been neglected by *uṣûlîs*.

As for the Book of Allâh, تعالى, it is the principle source and knowing it is mandatory. But we should relieve the *mujtahid* of two things. One, he is not required to know all of the Book, but only what is related to the *Sharî'a* rules, which amounts to five hundred verses. Second, he is not required to memorize it by heart. Rather, one should know [the Book's] parts in order to

retrieve the desired verses as needed.

Regarding the *Sunna*, it is a must to know the *hadîths* which relate to the *Sharî'a* rules. Although there are thousands, their [number] is limited. But again, the *Sunna* has the two exemptions mentioned above. It is not incumbent [upon a *mujtahid*] to learn the *hadîths* related to preaching or the conditions of the Hereafter, etc. Second, it is not necessary to memorize them by heart, rather he should have an authentic *hadîth* reference for the entire [corpus'] rules, such as the *Sunan* of Abû Dâwûd and *Ma'rifat al-Sunan* by Ahmad *al-Bayhaqî;* or a reference where it is known that careful effort has been devoted to collect the *hadîths* relating to the *Sharî'a* rules. Moreover, it is sufficient for him to know the places of every chapter in order to refer to them when the need for *fatwâ* arrives. Still, if he can memorize them, it is better and more complete.

Concerning *Ijmâ'*, it is mandatory that matters of consensus be distinguished [in his mind] so that he does not issue a *fatwâ* contrary to them. Likewise, he is required to know the texts so that he does not issue a *fatwâ* contradicting them either.

The aid for this principle is that he is not required to memorize all the instances of *ijmâ'* or legal differences. Rather, with respect to each question for which he issues a *fatwâ*, he must know that his *fatwâ* is not in opposition to *ijmâ'*. As for the condition that he should know that he is in harmony with one or another view of the jurists, whoever they may be, or knowing that an issue occurred at a time where the community of *ijmâ'* did not consider it, the least amount of this [awareness] is sufficient.

As for Reason, by this we mean the source of original negation for the rules [before the *Sharî'a*]. For Reason proves the removal of burden from statements and acts in their endless forms and shows that they are not [generally] classified according to the *Sharî'a* rules. And those [statements and acts] that are exempted based on revealed authority, namely the Book and the *Sunna*, are limited. But if they are many it is necessary to refer in each instance to the original negation and to the original state of freedom. Furthermore, it should be known that this can be changed only by a text or an analogy made on the basis of a text. Therefore, one seeks the texts, or what is regarded as a text—such as *ijma'* and the canonical acts of the Messenger, with reference to what his said act proves or indicates—in fulfillment of the requirements that we have detailed previously.

These, then, are the four sources.

As for the four sciences, [by which the *Sharî'a* rules are known] through their methods of extraction, two of them follow: One is the knowledge of establishing the proofs and their conditions. This causes evidences and proofs to be useful and it applies to all four sources. The second is knowing language and grammar in a way that eases the understanding of Arabic—this is particularly related to the Book and the *Sunna*. For each of these sciences there are aids and problems.

The details of the first science are such that [a *mujtahid*] should know the categories of sources, their forms, and conditions. Hence it must be known that sources are of three kinds: the Rational, which is self-evident; the *Sharî'a*, which become proofs

based on the rules laid down by the *Sharî'a;* and posited proofs, which are the linguistic expressions. However, complete knowledge of this accrues with no less than what we have specified in the introduction to *uṣûl* concerning the channels that impart knowledge. For whoever does not know the conditions of proofs will not be able to recognize the essence of the rules, nor of the *Sharî'a;* nor will he know the means of the Lawgiver, whom [the Prophet] was sent by.

Further, they say that it is necessary for a *mujtahid* to know the origination of the world [that is, that it is created] and its need for an Originator, who is described by the attribute necessary for Him [to create] and is above anything being considered impossible for Him. In addition, [the *mujtahid* must know] He has charged His worshippers through messengers, obliging [the worshippers] to assent and believe in them based on their miracles. He should have knowledge of the truthfulness of the messengers and the ways of examining their miracles. What is meant by this, in my view, is that the necessary element in all of this is decisive belief, since one becomes a Muslim based on it, and Islam is necessarily a condition for a *muftî.*

But as for knowing the methods of *kalâm* and its investigated proofs, according to their [*mutakallims'*] norms, this is not a condition, since there was none among the Companions and their Successors who was well-versed in the argumentation of *kalâm.*

As for advancing beyond blind imitation to awareness of the proofs [for origination of the world, etc.], it also is not a condition *per se.* But it necessarily occurs [in the knowledge of the *mujtahid*]

because of the function of *ijtihâd*, since no one reaches its rank in knowledge without hearing the proof of the creation of the worlds, the attributes of the Creator, His commissioning of the messengers, and the inimitability of the Qur'ân, for all of this is in the Book of Allâh. This is the fruit of the real knowledge that carries whosoever attains it beyond the borders of blind imitation, even though the person may not apply the techniques of *kalâm*. This is required for the rank of *ijtihâd*, such that if the case of a pure imitator is conceived with regard to believing in the Messenger and the principles of faith, *ijtihâd* would be permissible for him in the details of *fiqh* [the *furû'*].

As for the other introductory science, it is that of language and grammar, by which I mean, the amount that makes [the *mujtahid*] understand the address of the Arabs and their conventions in usage, to the extent that he is able to distinguish between explicit, apparent, and general expressions; literal and figurative meanings; generic and particular moods; clear and allegorical texts; unrestricted and restricted [expressions]; and denotative and connotative meanings. The facilitating factor here is that one is not required to reach the level of al-Khalîl or al-Mubarrad,[73] knowing 'all' the language and going deep into

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[73]Two great Arabic grammarians Mu<u>h</u>ammad b. Yazîd b. 'Abd al-Akbar al-Azdî Abû al-'Abbâs (d.285 H) known by the name al-Mubarrad, which is a Kûfan mispronunciation for al-Mubarrid, according to Jalâl al-Dîn al-Siyû<u>t</u>î, *Bughyat al-Wu'ât fî <u>T</u>abaqât al-Lughawiyyîn wa al-Nu<u>h</u>ât*, 3 vols. ed. Mu<u>h</u>ammad Abû Fa<u>d</u>l Ibrâhîm (Cairo: 'Isa al-<u>H</u>alabî Press, 1964), 1:269. Al-Khalîl b. A<u>h</u>mad al-Farâhîdî (d.175 H); see al-Siyû<u>t</u>î, *Bughyat al-Wu'ât fî <u>T</u>abaqât al-Lughawiyyîn wa al-Nu<u>h</u>ât*, 1:557-560.

grammar. Indeed, the required amount is that which is related to the Book and the *Sunna*, enabling the person to master the addrress' meaning and usage and comprehend its real intentions.

As for the two completing sciences, one is to know the abrogating [text] from the abrogated, and this is with regard to specific Qur'ânic verses and *ḫadîths*. The exemption for this is that *mujtahids* are not required to memorize all [such abrogations]. But in each occurrence in which he gives a *fatwâ*, he must know that this *ḫadîth* or that verse is not abrogated, and this includes the Book and the *Sunna*.

The second science, which is related to the *Sunna*, is knowing reporting, distinguishing the authentic from the unauthentic and the accepted from the rejected. For that which is not reported by a trustworthy [reporter] on the authority of another trustworthy [reporter] has no proof in it. The exemption here is that every *ḫadîth*—among those which the *ummah* has accepted—based upon which he [the *mujtahid*] issues a *fatwâ*, its *isnâd* [chain of reporters] need not be investigated. But if particular scholars dispute it, he must know the reporters and their trustworthiness. If they are well known to him, such as the case of al-Shâfi'î reporting from Mâlik on the authority of Nâfi' on the authority of b. 'Umar, he can rely on this. For those people have been [established] as trustworthy and the conditions of those reporters are widely known in the community through *tawâtur*.

Trustworthiness, then, is known through experience,

association, or *tawâtur*. Hence, what does not reach *tawâtur* is *taqlîd;* that is, imitating Bukhari and Muslim [for example], with regard to the reports of the two authentic collections of *hadîth*—and [Bukhari and Muslim] did not report [*hadîths*] except from those whose trustworthiness is known. This is purely blind imitation and is removed only by knowing the conditions of reporters. Based on hearing their circumstances, conduct, examination, and their lifestyle, one concludes whether they are trustworthy or not. But this is a long process and in our time—in view of the numerous *go-betweens*—is very difficult. A lesser requirement is to be sufficed with the trustworthiness of a truthful authority in the field, after knowing that his position on trustworthiness is based on a sound method, for opinions differ with regard to what injures a reporter and what makes him credible. Yet it is impossible for him [to be acquainted] through experience or direct association with those who have died long ago .

If it were required that [a reporter's] life-style be known through *tawâtur*, this would include [as reporters] no more than the popular *imâms*. Therefore a *mujtahid* can follow another trustworthy reporter regarding what he reveals about [the reporter under evaluation]. So we may follow [the trustworthy reporter's] accreditation after we have known the validity of his position in acknowledging credibility. For if we allow a *muftî* to rely on the authentic *hadîth* books whose transmitters are accepted by the specialists, this shortens the channels of transmission for the *muftî*. Otherwise, the process would be too lengthy and the problem extremely difficult in our time, especially with the numerous

generations [between us and the Prophet], and the situation will worsen from one generation to the next.

These are the eight sciences that qualify one for *ijtihâd*. But most of this is contained in three sciences: *hadîth*, language, and *usul al-fiqh*. As for *kalâm* and the details of *fiqh*, there is no need for them [for the purposes of ijtihâd]. Why should one need the details of *fiqh* while they are developed by the *mujtahids*, and they rule by them after reaching the rank of *ijtihâd*. Therefore, how can [*fiqh*] be a condition for attaining to the rank of *ijtihâd* while the pre-existence of *ijtihâd* is a condition for it. Certainly *ijtihâd* occurs in our times by practicing it. Thus, that is the way to gain experience now, while the process was different in the time of the Companions. Yet, someone may follow the way of the Companions as well.[74]

A subtle point that is neglected by the majority [of schools] is that the combination of these eight sciences is required with regard to the absolute *mujtahid*, who gives *fatwâ* in all [areas] of the *Sharî'a*. But *ijtihâd*, in my view, is not an indivisible entity; rather *ijtihâd* can be attributed to a scholar who is aware of its requirements with regard to some rules to the exclusion of others. So whoever knows the process of analogical thinking can give a *fatwâ* in an issue that is based on analogy, even though he is not versed in the science of *hadîth*. And whoever examines the issue

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[74]Meaning that someone who has the knowledge of *Sharî'a* can act like the Prophet in teaching other students.

of *musharraka*,[75] it is enough for him to have the natural *fiqhî* inclinations and to know the foundation of the basis of inheritance and his meanings, even if he does not attain or require the reports transmitted concerning the prohibition of intoxications, or the question of marriage without a guardian, for there is no relationship between this issue and the other; nor is there any relationship between these *h̲adîths* and the others. Therefore, how could unawareness of these *h̲adîths* or not knowing them be considered incompetency?

Moreover, whoever knows the *h̲adîths* [that govern] ruling on the execution of a Muslim or the killing of a *dhimmî*, and the way to handle the matter, should not be faulted for his lack of knowledge in grammar which leads him to misunderstand the verse ". . . *Wipe your heads and feet to the ankles.*" Also, you must make analogy based on this or what is identical in meaning.

In addition, it is not required for a *muftî* to answer every question. Malik, رضيَ الله عنهُ, was asked forty questions; he said with regard to thirty-six of them, "I do not know." And many times al-Shâfi'î, رضيَ الله عنهُ, hesitated to give an answer. Moreover, the Companions hesitated to give answers to [some] legal questions.

So all that is required is to be fully aware of [the topic] which he gives *fatwâ* upon when he does so. Therefore, he issues a *fatwâ* in what he knows, knowing that he knows. He should distinguish

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[75]*Musharraka* is an inheritance case where a woman dies leaving her husband, mother, blood brothers, and half brothers from her mother, all of whom share in the inheritance. Consult M. Qal'ajî and H. Qunaybî, *Mu'jam Lughat al-Fuqahâ'*, p. 431.

between what he does not know and what he knows, so he stops with regard to that which he does not know, and issues *fatwâs* or gives answers with regard to what he knows.[76]

[76]Ghazâlî, *al-Mustasfâ*, 2:482.

CONCLUSION

Rather than summarize Ghazâlî's views on the *Sharî'a* sources and his legal doctrine as expressed in *al-Mustasfâ*, which has been presented in this introduction, perhaps a broad but nevertheless more subtle observation needs to be made. *Hujjat al-Islâm's* engagement with philosophy was aimed, in the first place, at its refutation in order to prove the excellence of revelation and its transcendence over and above rational inquiry. One may add also that his encounter with *tasawwuf* sprang from his intensive personal quest for salvation, mindful of his final destination. He acknowledged that salvation could only be attained through adherence to revelation and, ultimately, its *Sharî'a*, a *Sharî'a* detailed in the endeavor of *fiqh* and governed by the principles of its *usûl*. In the religion that Ghazâlî lived by and for, the *Sharî'a* lies at its heart. Thus, if one were to measure the place of jurisprudence and its principles in Ghazâlî's lifework by comparing his contribution in the area of Law to his other writings, it becomes evident that Islamic jurisprudence and its principles formed the core of his concerns—more so than philosophy, more so than *tasawwuf*, more so than *kalâm*.[1] He is first and foremost a beacon

[1]Consult Ghazâlî's works on *fiqh* and *usûl al-fiqh* in this introduction where it certainly exceeds Ghazâlî's writings in other

of Islamic Law, whose writings there have lighted the path of Muslim legal thought for nearly a millennium and seem destined to continue doing so for some time to come.

This study, it is hoped, may be an eye-opener for those whose scholarship would reintroduce Ghazâlî to the world as he was, a great Muslim jurist who never separated Islamic jurisprudence from either other sciences or the diverse dynamics shaping human activity in this life.

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spheres of knowledge — indeed, it accounts for more than half of *all* his written contribution.